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THE OREGON SYSTEM

THE STORY OF DIRECT LEGISLATION IN OREGON

A Presentation of the Methods and Results of the Initiative and Referendum, and Recall, in Oregon, with Studies of the Measures Accepted or Rejected, and Special Chapters on the Direct Primary, Popular Election of Senators, Advantages, Defects and Dangers of the System.

BY
ALLEN H. EATON

CHICAGO
A. C. McCLURG & CO.
1912

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AUTHOR'S PREFACE

HOW would you like to live in a state where the people can and do enact laws for the common good which their Legislature has failed to enact for them, where they can nullify any obnoxious measure passed by the Legislature, where they can nominate and elect, or defeat for public office, any man regardless of his party strength, and can recall any public officer, Supreme Judge included, whose acts they do not approve; a state where the party boss has been put out of business; a state in short where the people rule and of which Senator Jonathan Bourne says, "It is the best system of popular government in the world today"? Such a state is Oregon.

How would you like to live in a state where the people can and do amend their constitution in the most radical fashion by a minority vote, where one-third of the voters decides the fate of laws affecting the other two-thirds, where one-twentieth of the voters can and do cripple the state educational institutions by holding up their funds; where special interests hire citizens to circulate petitions asking for the recall of judges who have found them guilty; where men representing themselves as for the people, buy signatures with drinks, forge dead men's names, practice blackmail by buying and selling, for so much per name, signatures for petitions needed to refer certain measures to the people; a state where the demagogue thrives and the energetic crank with money through the Initiative and the Referendum, can legislate to his heart's content; a state of whose system of government Mr. Frederick V. Holeman, a prominent lawyer and writer says: "It is hoped that the time is not far distant when the legal voters of the state will invoke the Initiative to abolish it"? Oregon is such a state.

I have friends who have come to Oregon because the people rule; I have friends who have moved out of Oregon for the same reason. Both Mr. Bourne and Mr. Holeman express the sentiments of two distinct and extreme classes of Oregon citizens. Both these opinions are interesting, and both are sustained by good arguments; but they are misleading, and neither is of much assistance to the less capable though equally affected citizen who must live and work under such a political system. To the man who really wants to know the truth of Oregon's experiment with direct legislation, these opposing opinions lose much of their possible value for the simple reason that they never appear together; that is, one magazine will give space to one side and another magazine will give space to the other side. Therefore it requires extraordinary effort on the part of the reader to get even the prejudiced statement of both sides.

But all the people of Oregon are not represented by these extremes. There is a rapidly growing class of citizens which realizes that the way out of the woods is neither through the leadership of those who refuse to recognize the evils which grow out of a system of direct legislation, nor through the leadership of those who close their eyes to its benefits and who would, if they had the power, sweep it away. This large class of citizens is watching intelligently the Oregon experiment, hoping to eliminate the evil which grows out of the system; determined to preserve the good. It is for such as these that this book has been written. Therefore its value will not consist in an expression of opinions, but in an unprejudiced examination of the work which the people of Oregon have done since the adoption of the Initiative and the Referendum in 1902.

If the story of the experiment of Oregon with direct legislation is to be of any value to the citizens of our state or to those of other states who are watching us, its narration must be undertaken with the purpose of giving information. The task of presenting the facts as they are is a worthy undertaking, particularly since I do not know of any one else who has tried to give the history from this unprejudiced standpoint.

It is hoped not only that the book will contain certain facts of value to the student of political science, but that its popular style will recommend it to any inquiring reader whether he has previously studied the question of direct legislation or not; and especially has it been designed to be of use to the many young people in the schools and colleges, and to the older ones in debating societies, who are discussing the subject of direct legislation. Radical changes in human nature will not be brought about by voting in or out any particular political theory. If this is kept in mind, it may not add anything to the pleasure, but it will add much to the profit of the student in his investigation of such an important and far-reaching question as that of Legislation by the People.

A. H. E.

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THE OREGON SYSTEM

CHAPTER I

HISTORICAL BEGINNINGS

IN his book entitled "The Sovereign People," published in 1907, Henry Lloyd said: "The only democracy in the world in which the people cannot be betrayed is the Swiss. There the people may force into legislation any law they want; they may prevent any act they do not want." The latter part of this statement is interesting to us who live in Oregon because we think we have gone even farther than Switzerland. Mr. Lloyd could now say with equal certainty that of all the democracies in the world, the state of Oregon is the one in which the people can make or unmake at will any law, constitutional or statutory, elect or recall any official,—in short, do anything in politics which they wish to do; for there is practically no limitation to their political powers. The adoption of such a political system by an American state has proved to be so unusual that it is referred to at home and abroad as the "Oregon System."

Before taking up in detail the features and workings of this system it is desirable that some comprehensive sketch of an historical nature be given with such other preliminary remarks as will fittingly open the way for the discussion.

The most revolutionary and far-reaching features of the Oregon System are the methods used by the people in their legislation, namely, the Initiative and Referendum. These are the principles to which the main portion of this book will be devoted. But there are other features such as the Direct Primary Law, the Corrupt Practice Act, and the Recall of Public Officials to which some attention can very properly be given here. One so often observes public speakers and writers refer to the Initiative and the Referendum, the Direct Primary Law, the Corrupt Practice Act, the Recall, and other features of the Oregon System, as though each meant the other and all the same thing, when they mean entirely different things; and often results which are attributed for instance to the Initiative and the Referendum are not caused by them at all, but spring from the operation of the Primary Law or some other feature of the system. Therefore one of the first things which the student of Oregon political conditions must do, is to define these very different powers and privileges in order that he may not fall into the common error of attributing every political fact to all, rather than to the separate measures which are so different and distinct in their characteristics. A brief definition, then, of the different features of the Oregon System together with a historical sketch of their adoption, will be not only helpful, but really quite essential to an understanding of the main study of this book, the Initiative and the Referendum.

The political history of Oregon reflects the greatest credit and honor on many of those who have made their exits from the stage of action; yet the story dealing with the frauds, the bribery, the abuse of power, and misuse of money in Oregon politics, is a very long one, and as full of local color as any western state could ask. Fraud and force and cunning were for so many years features of Oregon politics that they came to be accepted, not only as a part of the game, but by many as the attractive features of the game. The people of the state were a long time in beginning the reformation that laid the foundation for the political system which now distinguishes the Oregon commonwealth.

What may properly be termed Oregon's political reformation finds its first great expression in the adoption of the Australian Ballot Law, passed by the Legislature in 1891. Following this and passed by the Legislature of 1899, came Oregon's first Registration Law. The Australian ballot has been so generally adopted throughout the United States and is so well understood, that no comment upon it is necessary. The Registration Law adopted the Oregon Legislature went a great way tow protecting the state from wholesale election frau It has been amended to conform to the other la with which it coördinates. These two measur given to the people of Oregon by their Legislatu are mentioned here because they are so fundamen and because they laid the foundation upon which t later and more unique superstructure rests. though it is not customary, it is quite fair to give t Oregon Legislature credit for what it has done helping to purify the politics of the state.

In the general election of 1902, the constitution amendment providing for the Initiative and t Referendum was submitted to the people for the ratification, the amendment having passed two co secutive sessions of the Legislature. The peop adopted it by a vote of about eleven to one.

The first exercise of this new power was throug the agency of the Initiative in 1904 when the Dire Primary Law was submitted to the people and ca ried by a majority of 39,857 votes. This law pr vides for the holding of party elections and mak provisions by which it is possible for any individu who wants to run for office, and who can secure petition, to have his name placed on the ballo Whatever may have been the intention of th framers of this law, it has practically done away wit the political conventions of the state, and has ha a very decided though a somewhat questionable effect upon the political parties. It has, temporarily at least, taken the power out of the hands of the party leaders to choose the candidates for the general election and has made it possible for any aggressive individual to get his name on the ballot as a candidate for any office. The feature of this law which has caused the widest comment and the one which has been the greatest bone of contention in the campaigns and the elections, is what is known as Statement No. 1, which is a pledge on the part of the candidate running for the legislature that if elected he will vote for that candidate for United States Senator who has received the highest number of votes by the people in the preceding general election. This is the pledge which is accountable for the election of United States Senators by the people.

In the election of 1908 the people passed the Corrupt Practice Act, which is a long and an elaborate law intended to regulate the expenditures of candidates running for office. Aside from this, however, it prohibits electioneering on election day, and it has entirely changed the character of that day in Oregon.

In 1910 the people amended their constitution by providing for the Recall; that is, whenever twenty-five per cent. of the constituents of an officer are dissatisfied with his conduct, they can upon proper petition demand a new election.

These features of the Oregon Political System will be discussed at greater length as they are taken up and analyzed under the chapters dealing with the sixty-four measures upon which the people of the state have passed judgment. There are several other features of the Oregon System which are not taken up here because they are secondary. They are changes in policies rather than in principles of government. However, since most of these have been secured through the Initiative, they will come in for their share of explanation later.

From what has been said, it already must appear that the people of the state of Oregon enjoy a very wide political power — so wide that they may do anything in politics that they please to do. There are practically no restraints upon their power. From this standpoint, Oregon is without doubt the most democratic democracy in the world, if we mean by democracy a state where the people have absolute power.

Before taking up the main subject of this book,— that is, an analysis of the different measures upon which the people have passed judgment during the time that they have had the Initiative and the Referendum — two short chapters will define or explain the principles of the Initiative and the Referendum, and show how they are exercised; that is, how the political machinery is employed in the use of these great powers.

CHAPTER II

THE INITIATIVE AND REFERENDUM DEFINED

THE Initiative and the Referendum are methods used by the people to make laws, or to veto laws which have been made by their Legislature. By the Initiative any voter can, by presenting the proper petition to the Secretary of State, get any measure he desires placed upon the ballot for decision. By the Referendum, any one can, by presenting the proper petition to the Secretary of State, have a measure which has been passed by the Legislature placed upon the ballot for final decision. Thus any one in Oregon can either initiate a measure or have one referred, the only requirement being that he secure sufficient signatures to a petition addressed to the Secretary of State.

The Legislature may, by a joint resolution, submit any measure to the people for their decision. This phase of the Initiative, or as it is more often classified the Referendum, is not new but is one which the Legislature has employed since Oregon became a state, except that only constitutional amendments were proposed in this way, and then only after the resolution had passed two consecutive sessions of the

Legislature. Under the present plan the Legislature may submit a constitutional or a statutory measure, provided it passes both houses by a two-thirds vote.

The feature of the system which is both new and revolutionary, is that now the Initiative and the Referendum are employed directly by the people.

The fate of a measure, whether initiated or referred, is determined not by a majority of the voters of the state, but by a majority of those who vote on the particular measure; in fact a number of measures have become laws when less than forty per cent. of the voters supported them.* This provision applies not only to statutory bills but to constitutional amendments as well, and is quite in contrast to the old law by which a constitutional amendment had to pass two consecutive sessions of the State Legislature, and then receive a majority of the votes cast upon it in the general election.

It will therefore be seen that through the Initiative, the people have not only taken over to themselves powers which they once delegated to the Legislature, but have taken even greater powers than those originally set forth in the constitution. The people of Oregon can and do not only make laws independent of the Legislature, but pass constitutional amendments at will. But this is not all: the Governor cannot exercise his power of veto on any measure passed upon by the people.

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* See Note 1.

To some the words Initiative and Referendum must signify about the same thing. They are, however, entirely different, the only similarity being that they are both methods used to secure the decision of the people on proposed laws. The Initiative is constructive,— it initiates or originates; it is not dependent upon something which has been done, as is the Referendum, but it is executive. It is the direct expression of the sovereign power of the state — the people. Its great and sweeping power will be more thoroughly appreciated when it is understood that by this power alone the people can without debate or delay, change the constitution, or pass any law amending or repealing those made by the Legislature; and these measures, no matter what their nature, cannot be vetoed by the Executive. The Legislature, however, can amend such measures. But again the people have recourse to action, this time through the Referendum; that is, should they not like the amended measure, they can prevent its going into effect by employing the Referendum. Or, they can of course employ the first method and initiate another bill nullifying the changes made by the Legislature.

However much the Initiative and the Referendum may have been intended to supplement the work of the Legislature, the practical result in Oregon has been the establishment of another legislative body. Thus we have in Oregon two legislative bodies.

One of these consists of some 150,000 voters of the state, the other of the ninety members of the Legislature. The work of the smaller body is guarded first by the constitutional provision that every bill before becoming a law must receive a vote of the majority of the members of that body. Secondly, there is the Governor's veto that can be employed on any measure,— a check which, however, may be overcome by a two-thirds vote of the members of each house, after which, if the measure is passed, the people can invoke the Referendum on it. In such a case, the bill is annulled for nearly two years, when the people shall vote on it. If the Referendum is sustained, then the bill becomes a law; if it is defeated, that ends its course.

On the other hand, when the Legislature consisting of 150,000 members decides to pass a bill, there are no restrictions and it becomes a law even though only three people may have voted on it, provided two were for it. The Referendum is a new political privilege only in respect to the power of the people to invoke it upon their own initiative. Every state in the Union but one has for many years used the old form of the Referendum in submitting constitutional amendments; that is, all amendments had to be submitted or referred to the people of the state for final decision.

The Referendum, as applied now in Oregon, is not a constructive method as is the Initiative, but a destructive method. Its only object is to nullify some measure passed by the Legislature. However, when it is considered together with the Initiative, the power of the people in legislation is absolute. That it may be an obstruction in the way of legislation is shown by the fact that a mere five per cent. of the voters can, by signing a referendum petition, hold up for two years at least a legislative measure which may ultimately be ratified by a majority of the voters.* When, however, the people pass a law, it cannot be held up, but becomes operative as soon as the votes are counted. It is obvious then, that the Referendum is a power which the people have to check or defeat the unpopular measures which the Legislature has passed. The right to exercise this power is restricted only by the emergency clause, by use of which the Legislature can prevent a referendum on a measure; however, but few bills will permit the application of this clause.†

The Initiative then is the method by which the people initiate or introduce laws. These laws can neither be amended by the people nor vetoed by the Executive. The Referendum is the method by which measures passed by the Legislature are referred to the people. There is no chance to amend the measure referred and the decision cannot be vetoed.

Notwithstanding the fact that the Supreme Court has held that the Initiative and the Referendum do not destroy the representative character of our government, it cannot be denied that they have set up another legislative branch of government with greater power and less restrictions than were originally provided by our constitution. It may be added that Oregon has not only gone farther in the development of direct legislation than any other state in the Union, but farther than any other country in the world, even including Switzerland.* In Switzerland, matters affecting the budget are not acted upon by the people, nor are local matters usually made the business of the state. In Oregon, however, appropriation bills have frequently been referred, and ten county measures were before the electors for decision in 1910. In Switzerland both the Initiative and the Referendum have been used sparingly during the twenty years or more since the people have had these powers. In Oregon the people in four elections have passed upon sixty-four measures, the number increasing from year to year. At the last election, that of 1910, thirty-two measures were on the ballot. The indications are that an even greater number will be submitted at the next election which occurs in November, 1912.

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* See Note 2.

† See Note 3.

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* See Note 4.

CHAPTER III

THE MACHINERY OF DIRECT LEGISLATION

HAVING defined in the previous chapters the principles of the Initiative and the Referendum, we will now examine the machinery underlying the working of these principles. The method used to initiate a measure or to refer one which the Legislature has passed is by petition. In the case of an initiative, eight per cent. of the legal voters are required to sign; in the case of a referendum, five per cent. are required. The basis for computing the number of names for either petition is the total vote cast for Supreme Judge at the last preceding election.

The form which the law requires is that a copy of the petition appear on each sheet containing signatures, the sheets being arranged for twenty names each. The individual circulator, when he is through with his work, writes the names of the signers of the petition on the back of the sheet and makes affidavit to the effect that each man signed in his presence and that he believes each has told the truth relative to his right as a voter and his place of residence.* A notary public then swears the circulator.

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* See Note 5.

The petition bearing the required number of signatures must be presented to the Secretary of State; with an initiative, this must be done at least four months before the election upon which the measure is to be decided; with a referendum, the petition must be presented to the Secretary of State not longer than ninety days after the adjournment of the Legislature. In Oregon, legislative enactments go into effect ninety days after the adjournment of the session, except in the case of measures containing the emergency clause upon which the Referendum cannot be invoked. If the Secretary of State is not satisfied with the petition, he may refuse to file it, whereupon any citizen of the state may, within ten days, bring mandamus proceedings to compel him to file it. If he does file it and its legality is questioned, any taxpayer of the state may bring suit in the Circuit Court of Marion County to enjoin the Secretary from placing the measure on the ballot.*

The titles of the measures are prepared by the Attorney-General of the state and appear on the ballot in that form. The bills appear on the ballot in the order of their filing. Information concerning the measures upon which the people are to vote is given in what is called the Voters' Pamphlet. In this pamphlet every measure upon which the people are to pass is printed in full and the exact form in which it will go on the ballot is set out in plain type. Arguments for and against each measure are given if those who favor or oppose it will prepare the arguments and pay a portion of the cost of printing them. The expense of distributing these pamphlets to the voters is paid by the state. No measures are subject to amendment so that the vote is "Yes" or "No." In the case of a legislative enactment being referred by the people, the measure is stated in the affirmative the same as if it were a new bill.

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* See Note 6.

Any measure which receives the majority of votes cast upon that particular bill at once becomes a law. There are serious defects in the machinery of direct legislation which will be noted in a subsequent chapter, but the methods here outlined will be sufficient for the purpose of making a fair analysis of the sixty-four measures upon which the people of Oregon have passed their opinion in the last four elections, that is in 1904, 1906, 1908, 1910.

CHAPTER IV

THE SIXTY-FOUR MEASURES PASSED UPON BY THE PEOPLE

IT is now eight years since the people of Oregon began their experience in direct legislation. In 1901 the Oregon Legislature submitted the amendment embodying the Initiative and the Referendum to the people for their ratification. The vote was taken in 1902 and the amendment adopted by 62,024 votes for it and 5,668 votes against it. The first use of it was in 1904 when two measures were submitted. In 1906 eleven measures were submitted, in 1908 eighteen, and in 1910 thirty-two appeared on the ballot. It is estimated now that about forty measures will appear on the 1912 ballot.

Having already exercised our judgment on sixty-four measures, thirty-one of which we have accepted and thirty-three of which we have rejected, it would seem that we might with profit to ourselves and to our spectators, pause long enough to take an inventory of our stock and endeavor to discover the result. The first big question is, have we made good? Do the people of Oregon know enough to make laws, and are they enough interested to give the necessary attention to that business?

Fortunately we have had enough experience so that the prophecy of the theorist as to what we might do must give away to the fact of what we have done. The way to profit by these experiences is to throw on the light of fair investigation and remember what we see — even to the things that we did not want to see. This is the purpose of this book and its only justification.

Naturally the first question we ask ourselves is, have the people of Oregon exercised intelligence in deciding the fate of the sixty-four measures which have been submitted for their determination? This inquiry brings us to a classification of the measures into two groups: those that have been accepted, and those that have been rejected. No one will question the fact that in deciding such issues the negative vote is as much an indication of intelligence or wisdom as the affirmative one. So we shall have occasion to examine rather closely both the measures that have passed and those that have failed to pass. In order to clear the way for the fuller discussion of the more important group,— that is, the measures that have been accepted,— we will reverse the natural order and first eliminate the measures that have been rejected. The conclusion at this point that the adopted measures are the more important does not mean that they are the best. The very fact that they have been accepted as the law of the state makes them more important than that group which has influenced the state only through the period of agitation preceding their rejection.

For the reader's reference, a complete table of the measures submitted under the Initiative and the Referendum is given, telling the method by which they were submitted; the affirmative and the negative vote on each; the percentage of the total vote cast, and the percentage of the total vote by which the successful measures were adopted.

MEASURES SUBMITTED TO THE PEOPLE OF OREGON IN THE LAST FOUR ELECTIONS.

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
1904				
Direct primary law with direct selection of U. S. Senator. (a)	56,205	16,354	.77	.60
Local option liquor law. (a)...	43,316	40,198	.89	.46
1906				
Omnibus appropriation bill, state institutions. (b)	43,918	26,758	.73	.45
Equal-suffrage constitutional amendment. (a)	36,902	47,075	.86	
Local option bill proposed by liquor people. (a)...........	35,297	45,141	.83	
Bill for purchase by state of Barlow toll road. (a)........	31,525	44,527	.78	
Amendment requiring Referendum on any act calling constitutional convention. (a)....	47,661	18,751	.68	.49

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
Amendment giving cities sole power to amend their charters. (a)	52,567	19,852	.74	.54
Legislature authorized to fix pay of state printer. (a)	63,749	9,571	.75	.65
Initiative and Referendum to apply to all local, special and municipal laws. (a)	47,678	16,735	.66	.49
Bill prohibiting free passes on railroads. (a)	57,281	16,779	.76	.59
Gross-earnings tax on sleeping, refrigerator and oil-car companies. (a)	69,635	6,441	.78	.72
Gross-earnings tax on express, telephone and telegraph companies. (a)	70,872	6,360	.79	.73
1908				
Amendment increasing pay of legislators from $120 to $400 per session. (c)	19,691	68,892	.78	
Amendment permitting location of state institutions at places other than the capital. (c)	41,971	40,868	.73	.37
Amendment reorganizing system of courts and increasing supreme judges from three to five. (c)	30,243	50,591	.72	
Amendment changing general election from June to November. (c)	65,728	18,590	.75	.58
Bill giving sheriffs control of county prisoners. (b)	60,443	30,033	.80	.53

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
Railroads required to give public officials free passes. (b)	28,856	59,406	.78	
Bill appropriating $100,000 for armories. (b)	33,507	54,848	.78	
Bill increasing fixed appropriation for State University from $47,500 to $125,000 annually. (b)	44,115	40,535	.75	.39
Equal-suffrage amendments. (a)	36,858	58,670	.85	
Fishery-bill proposed by fish-wheel operators. (a)	46,582	40,720	.77	.41
Fishery-bill proposed by gill-net operators. (a)	56,130	30,280	.76	.49
Amendment giving cities control of liquor selling, pool-rooms, theaters, etc. subject to local-option law. (a)	39,442	52,346	.81	
Modified form of single-tax amendment. (a)	32,066	60,871	.82	
Recall power on public officials. (a)	58,381	31,002	.79	.51
Bill instructing legislators to vote for people's choice for U. S. Senators. (a)	69,668	21,162	.80	.61
Amendment authorizing proportional representation law. (a)	48,868	34,128	.73	.43
Corrupt practices act governing elections. (a)	54,042	31,301	.75	.48
Amendment requiring indictment to be by grand jury. (a)	52,214	28,487	.71	.46
Bill creating Hood River County. (a)	43,948	26,778	.71	.39

1910

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
Amendment permitting female taxpayers to vote. (a)	35,270	59,065	.80	
Act establishing branch insane asylum in Eastern Oregon. (c)	50,134	41,504	.78	.42
Act calling convention to revise state constitution. (c)	23,143	59,974	.71	
Amendment providing separate district for election of each state senator and representative. (c)	24,000	54,252	.67	
Amendment repealing requirement that all taxes shall be equal and uniform. (c)	37,619	40,172	.66	
Amendment permitting organized districts to vote bonds for construction of railroads for such districts. (c)	32,844	46,070	.68	
Amendment authorizing collection of state and county taxes on separate classes of property. (c)	31,629	41,692	.62	
Act requiring Baker County to pay $1,000 a year to circuit judge in addition to his state salary. (b)	13,161	71,503	.72	
Bill creating Nesmith County from parts of Lane and Douglas. (a)	22,866	60,951	.71	
Bill to establish a State Normal School at Monmouth. (a)	50,191	40,044	.77	.43
Bill creating Otis County from parts of Harney, Malheur and Grant. (a)	17,426	69,016	.68	

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
Bill annexing part of Clackamas County to Multnomah. (a)	16,250	69,002	.73	
Bill creating Williams County from parts of Lane and Douglas. (a)	14,508	64,090	.67	
Amendment permitting people of each county to regulate taxation for county purposes and abolishing poll taxes. (a)	44,171	42,127	.73	.38
Amendment giving cities and towns exclusive power to regulate liquor traffic within their limits. (a)	53,321	50,779	.88	.45
Bill for protection of laborers in hazardous employment, fixing employers' liability. (a)	56,258	33,943	.77	.48
Bill creating Orchard County from part of Umatilla. (a)	15,664	62,712	.67	
Bill creating Clark County from part of Grant. (a)	15,613	61,704	.67	
Bill to establish a State Normal School at Weston. (a)	40,898	46,201	.74	
Bill to annex part of Washington County to Multnomah. (a)	14,047	68,221	.70	
Bill to establish a State Normal School at Ashland. (a)	38,473	48,655	.74	
Amendment prohibiting liquor traffic. (a)	43,540	61,221	.88	
Bill prohibiting sale of liquor, providing for search for liquors and regulating shipments of same. (a)	42,651	63,564	.91	

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
Bill creating board to draft employers' liability law for submission to legislature. (a)	32,224	51,719	.71	
Bill prohibiting taking of fish in Rogue River except with hook and line. (a)	49,712	33,397	.71	.42
Bill creating Deschutes County out of part of Crook. (a)	17,592	60,486	.66	
Bill for general law under which new counties may be created or boundaries changed. (a)	37,129	42,327	.68	
Amendment permitting counties to vote bonds for permanent road improvement. (a)	51,275	32,906	.72	.43
Bill permitting voters in direct primary to express choice for President and Vice-President, to select delegates to national conventions and nominate candidates for presidential electors. (a)	43,353	41,624	.72	.37
Bill creating board of people's inspectors of government, providing for reports of board in Official State Gazette to be mailed to all registered voters bi-monthly. (a)	29,955	52,538	.79	
Amendment extending Initiative and Referendum, making terms of members of Legislature six years, increasing salaries, requiring proportional representation in Legislature, election of Speaker of House and Pres.				

	Yes	No	Per cent of total vote cast	Per cent of vote deciding measure
of Senate outside of members, etc. (a)	37,031	44,366	.69	
Amendment permitting three-fourths verdict in civil cases. (a)	44,538	39,399	.71	.38

(a) Submitted under the Initiative.

(b) Submitted under the Referendum upon legislative acts.

(c) Submitted to the people by the Legislature.

The basis for the above computations is the vote on governor and supreme judge.

CHAPTER V

THE THIRTY-THREE MEASURES REJECTED

THE measures rejected were as follows:

1906

Amendment for Equal Suffrage.
Local Option Bill for Liquor Interests. (I)
Purchase of Mt. Hood and Barlow Toll Road. (I)

1908

Amendment Increasing Pay of Legislators. (L)
Amendment Reorganizing Court System. (L)
Compulsory Pass Bill. (R)
Armory Appropriation Bill. (R)
Equal Suffrage Amendment. (I)
Bill Giving Municipalities Control of Liquor Selling. (I)
Amendment for Single Tax. (I)

1910

Equal Suffrage Amendment. (I)
Call for Constitutional Convention. (L)
Separate Districts for Senators and Representatives. (L)
Two (2) Tax Amendments. (L)

Increase Salary Circuit Judge Baker County. (R)

Eight (8) Measures for new Counties and Boundaries. (I)

State Normal School at Weston. (I)

State Normal School at Ashland. (I)

State Wide Prohibition. (I)

Creation of Board to Draft Liability Law. (I)

General County Formation Measure. (I)

Creation of Board of People's Inspectors. (I)

Reorganization of the Legislature. (I)

("I" submitted by the Initiative)
("L" submitted by the Legislature)
("R" submitted by the Referendum)

Each one of these will now be given special consideration.

ELECTION OF 1906.

The first measure to be rejected in the 1906 election was a constitutional amendment providing for equal suffrage. There were 36,902 votes for the amendment, and 47,075 against it. Ninety per cent. of the electors voting for governor expressed themselves on this issue. The 10,000 majority against this measure cannot fairly be said to indicate any ignorance, for the people of Oregon have had the issue up so often and were familiar with its nature.*

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* See defeated amendments for 1908 and 1910.

Another measure rejected was entitled the Local Option Bill, proposed by the liquor people. By consulting the table of measures * it will be noticed that in 1904 the voters of the state adopted by a majority of about 3,000 a measure called the Local Option Bill. For many years the Legislature of the state had been handicapped in its work by biennial legislation on the liquor question. The bill which the people adopted took the matter out of the hands of the Legislature and left the decision and regulation with the people of the counties and smaller political units. This gave an opportunity to the communities to act independently of the moods of the Legislature and no doubt both the people and the Legislature felt relieved. At any rate there seemed a strong sentiment favorable to trying out thoroughly the original bill, and this inclination alone would account for the small majority by which the premature bill of the liquor interests was rejected. That the people were interested in the controversy was indicated by the fact that over eighty-six per cent. of the voters passed upon the measure.

The third measure rejected by the people was entitled " A Law to Abolish Tolls on the Mt. Hood and Barlow Road and Providing for its Ownership by the state." This was the first trick bill tried on the Oregon electorate. Innocent enough looking it was to be sure, and inviting the support of all citizens

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* See page 18.

who were sorry for those who had to pay the toll. Most of the toll roads in Oregon had long ago been done away with and why should not this one be abolished? But somebody discovered that if the bill passed the state of Oregon would be bound to purchase the road for $24,000 and keep it up afterward. Graft was suggested, and through the publicity of the newspapers together with the grapevine telegraph, the people voted down the innocent looking bill by a majority of 13,000 votes thus saving themselves from the pitfall laid for them, and giving the advocates of direct legislation a chance to emphasize the wisdom of the people.

ELECTION OF 1908.

In the election of 1908 there were nineteen measures on the ballot, seven of which were rejected. The first one was an amendment increasing the pay of legislators from $3.00 to $10.00 per day. Nearly eighty-five per cent. of the voters gave their opinion of this measure which was submitted to the people through a House Joint-Resolution. Of the voters, 19,691 were in favor of the increase, but 68,892 were not. Whatever opinion our legislators who submitted the measure may have had on this matter, the vote cannot be put in the column of the unintelligent decisions. Had the measure contained other provisions than a raise in salary, provisions intended to improve the quality of the Oregon Legislature, it is likely it would have received more support. But there would seem to be little logic in the argument that this increase in salary alone would improve the character of that body.

The amendment to reorganize the system of courts and increase the supreme judges from three to five was defeated by a majority of about 20,000. This amendment was also submitted to the people by the Legislature. The purpose of it was to change the judicial system to conform more closely to that of Washington and of California. It also provided for two additional supreme judges. The changes proposed in the judicial system were thoroughly presented to the members of the Legislature and were approved, but the measure was one which might be termed a lawyer's bill; that is, a technical bill which required explanation to give it standing. There was considerable work done by some of the lawyers of the state in opposition to the measure, and since no argument appeared in the Voters' Pamphlet in favor of it, and since the people doubtless did not understand its provisions or intent, the "no" vote was used as the safest alternative.

This is the first strong application of the policy that is now pursued by many Oregon voters, namely, when in doubt vote "no." Such a policy can hardly be considered as a mark of the highest intellectual action, yet the wisdom of it in direct legislation is worth considering.

The first legislative bill which the people killed through the use of the Referendum, was one requiring the railroads to furnish public officials with free passes. The wisdom of the two to one vote which killed the bill will hardly be questioned. For many years it had been the custom in Oregon to furnish not only public officials with transportation, but also their families. However unjust this may have been to the railroads, they must have figured that they could endure the hardship; because the custom continued until 1906 when the people by an overwhelming vote passed an initiative bill prohibiting free passes. This was before Oregon had a railway commission,* and it can easily be understood why a good many thousand voters thought that about the only way to even up with the railroad company and secure something from these interests was to have them furnish transportation; and if this were made compulsory, it was reasoned that it would not leave the recipients under any obligations to them. But many people did not approve of this plan, and so when the opportunity given by the Legislature came, they registered their protest in such numbers that their decision could not be misunderstood.

The Legislature of 1907 passed a bill appropriating $100,000 for the construction of armories for the Oregon National Guard. The National Guard has always been popular in Oregon, but this bill was looked upon by many as an unwise tax and a bad precedent to establish. There is little cause to question the intelligence of the action on this bill. There was no counter argument in the Voters' Pamphlet defending the armory bill, and this together with the fact that many opposed it because it had been passed by the Legislature along with a considerably increased budget, will help account for the more than 20,000 majority by which it was defeated.

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* See Note 7.

In 1908 the equal suffrage amendment was defeated again by more than a 20,000 majority. In addition to an opposition which the advocates of Woman's Rights seemed unable to overcome, the sentiment this year against it was likely increased by a good many who were tired of voting on it every election. But in the past three years the state wide prohibition movement seemed to be gaining ground all over Oregon, and as a consequence, equal suffrage was strongly opposed by the liquor dealers who feared that if the women could vote, it would result in making Oregon dry. Another element explaining in part the overwhelming defeat of the measure was the active work of the Anti-Suffrage organization consisting of women who conducted an effective campaign against the measure.

The voters by a majority over 12,000 defeated an amendment presented by the liquor interests which proposed giving cities control of liquor selling pool rooms, theaters, etc., subject to the Local Optio Law. This bill was intended to give the city the exclusive regulation of saloons, pool rooms, theaters etc. It was widely opposed and publicly denounce as an attempt to nullify the provisions of the Loca Option Law, a law which seemed to be giving genera satisfaction in the state at the time. At any rat there seemed to be a strong determination on th part of the Oregon citizens not to interfere with th law until after it had been thoroughly tried out.

The last measure of the 1908 list which the electors defeated was one which the supporters terme "A step in the direction of the single tax." Without explaining its provisions more fully, it can be sai that the frank statement of the advocates of th amendment that it was such a step is responsible fo its defeat by almost two to one. We shall hav occasion later on to see how "a great step towar the single tax" was voted by the people through th fact that its purpose was skillfully concealed. Thi defeated amendment read as follows: "For constitutional amendment providing that all dwellin houses, barns, sheds, outhouses, and all other appurtenances thereto; all machinery and building used exclusively for manufacturing purposes and appurtenances thereto; all fences, farm machinery, an appliances used as such; all fruit trees, vines, shrubs and all other improvements on farms; all live stock all household furniture in use; and all tools owned by workmen and in use, shall be exempt from taxation in addition to exemptions now authorized by the Constitution." In the Voters' Pamphlet no arguments appeared against the amendment, but four and one-half pages appeared in favor of it. The argument was signed by the "Oregon Tax Reform Association" which we may guess to be a part of the single tax company, several of whom are now known to be under pay from the Fels Fund to secure single tax in Oregon. To be sure, a good many voters doubtless scented the great change that this amendment would work in Oregon, yet I cannot help feeling that the frank admission to which I have referred was largely responsible for its overwhelming defeat. Opponents of the measure believe the action of the electorate in rejecting it reflected favorably upon their intelligence.

ELECTION OF 1910.

We now come to the election of 1910, in which thirty-two different propositions were submitted, and out of these the people rejected twenty-three.

The first measure rejected was entitled "An amendment permitting female taxpayers to vote." The advocates of Woman Suffrage have never lagged in their efforts to win; consequently, the issue will not only be one of those which will appear on the ballot in 1912, but from present indications it will continue to appear on every ballot until the strong prejudice against it is overcome. What was said in connection with the vote in 1908 resulting in the defeat of this measure, applies to that cast in 1910 when the majority against the issue climbed up to nearly twenty-five thousand.

The second measure was an act calling for a convention to revise the state constitution. This was submitted to the people by the Legislature. When the people had a chance to express themselves, 59,974 voted against it and 23,143 voted for it. It will be remembered that the people had been practicing the art of constitution-making themselves since 1904, and they did not view with favor the prospect of a convention doing what they could do so very satisfactorily themselves. Opposition to the Oregon System was very strong by some of the men instrumental in calling the convention, and no doubt there were thousands of people who thought that if the amendment was passed it would be taken advantage of by those who would like to doctor up some of the acts recently passed by the people. It will be interesting to note here that in 1906 the people by an initiative had passed an amendment requiring that a call for a constitutional convention must be submitted to the people and ratified by them before such a meeting could take place.

The next measure to be rejected was an amendment to provide a separate district for the election of state senators and representatives. This was also a measure which was submitted to the people by the Legislature. It should be remembered that in 1908 the people had voted an amendment authorizing a proportional representation law, but the Legislature of 1909 which submitted the separate district plan, failed to enact the legislation necessary to put the people's bill into effect. The legislative bill as well as the act calling for a constitutional convention was strongly opposed by the People's Power League and both propositions were defeated.* Although there is little doubt but that the majority of the voters were at heart opposed to those propositions, it is quite certain that such an overwhelming defeat was contributed to somewhat by the feeling that the Legislature had disregarded their wishes and recommendations and was trying to substitute, at least in the case of the single district plan, something which the electorate did not want, a circumstance which they really resented.

The points involved in the next two measures submitted to the people by the Legislature are covered by a quotation from the report of the Oregon State Tax Commission for 1911:

"Article I, Section 32. No tax or duty shall be imposed without the consent of the people or their representatives in the Legislative Assembly. Taxes shall be levied and collected for public purposes only, and the power of taxation shall never be surrendered, suspended or contracted away.

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* See Note 8.

"Article IX, Section 1. The Legislative Assembly shall, and the people through the Initiative may, provide by law a uniform rule of taxation, except on property specifically taxed. Taxes shall be levied on such property as shall be prescribed by law. The Legislature, or the people through the Initiative, may provide for the levy and collection of taxes for state purposes and for county and for other municipal purposes upon different classes of property, and may provide for the ascertainment, determination, and application of an average rate of levy and taxation upon property taxed for state purposes. The legislative power may provide for the apportioning of any state tax among the several counties as county obligations to the state by reasonable and equitable rules."

These proposed amendments were well designed to prepare the way for genuine tax reform in Oregon. Under them general laws could be enacted providing:

"1. For classification of subjects of taxation, to secure a just return from each class according to its earning capacity or ability to pay;

"2. For exemption of certain property from taxation to the extent that it performs a public service which would justify exemption in whole or in part;

"3. For complete or partial separation of the sources of state and local revenues, that the tax system may conform to natural divisions of government and that the burdens of taxation may be more equitably apportioned;

"4. For distinct treatment, exemption or specific assessment of intangible personalty, removing the abuses of the present system of taxing such property;

"5. For separate classification and taxation of forest lands, water powers, and other natural resources that conservation and development of the same may be promoted;

"6. For apportionment of state taxes to be paid by the counties according to equitable rules, doing away with the present cumbersome process of equalization."

But these proposed amendments of Section 32, Article I, and Section 1, Article IX were defeated. It is safe to say that this result is due entirely to the fact that their purpose and the wisdom of their enactment were not fully understood and appreciated.

An amendment permitting organized districts to vote bonds for construction of railroads by such districts, was defeated by about 13,000 votes. Through the effort of a well-organized and effective lobby at the session of 1909, the Legislature was influenced to submit this important measure to the people for their decision. Through its provisions, any organized district of the state which chose to do so, could bond itself for the purpose of constructing and maintaining railroads. The issue was a perfectly clear one and no matter what decision the people might have made on it, the results could not have reflected upon their intelligence; indeed, there is a good deal of ground for the claim that they not only showed intelligence in this particular act, but that they exercised considerable wisdom.

We next come to a purely local measure, "An act requiring Baker County to pay $1,000 a year to the Circuit Judge in addition to his state salary." This was a bill passed by the Legislature of 1909, and there seemed to be some good arguments in its favor. The people of Baker County however, did not like the action and therefore called a referendum on the matter. The result was that everybody in the state took a whack at the proposition and when the votes were counted, there were 13,161 favorable to the increase, and 71,503 unfavorable. One cannot consider that the action of the people in this case indicates any particular degree of intelligence or any lack of it, but all will be forced to the observation that it is clearly out of place for eighty-five thousand voters in all different sections of the state to express themselves upon a matter which concerns only the citizens of one county. In the Voters' Pamphlet no argument was set forth on this proposition, but it is apparent that the decision of the state at large was practically an emphasis of that of the people of Baker County who registered a heavy vote against the provision. The reflection then, if there is any, in this case, is not upon the intelligence of the electors, but upon the provisions of the law which permits the people of all the state to vote upon measures that are purely local. This defect will be discussed in a later chapter.

The next measure to meet defeat was also local in character, being a bill providing for the creation of Nesmith County from parts of Lane and Douglas. 22,866 people favored the new county, while 60,951 were opposed to it. This was the result after a very active campaign on the part of both sides. Without going into the argument for or against the establishment of this county, it may be said that the overwhelming vote was really an expression of the people more on the point of their unwillingness to settle local measures than upon any other one thing. In this election of 1910 there were eight measures providing for the formation of new counties, and for the change of boundary lines in others; which provisions not only loaded up the ballot and made it a very long one, but which involved questions upon which the people of the state at large were, without a doubt, unable to register a very satisfactory vote. In addition to the Nesmith County project, the following ones were disposed of in practically the same way by a similar vote; a bill creating

Otis County of parts of Harney, Malheur and Grant; a bill annexing part of Clackamas County to Multnomah; a bill creating Williams County from parts of Lane and Douglas; a bill creating Orchard County from parts of Umatilla; a bill creating Clarke County from parts of Grant; a bill to annex a part of Washington County to Multnomah; and a bill creating Deschutes County out of a part of Crook.

Objectionable as the feature of the law is that requires that the people of the whole state pass upon measures that are purely local, I cannot come to any other conclusion, but that the people did the wise thing in defeating these measures so overwhelmingly, and stating plainly to the different communities that they did not want to be bothered any more with their local differences.

Two bills of a similar character voted down by the people were those to establish a State Normal School at Weston, and one at Ashland. For a number of years, the state has been supporting three Normal Schools, one each at the two places mentioned, and one at Monmouth which is located at about the center of population of the state. Weston is in the eastern part, Ashland in the southern part, and Monmouth in the central part as far as population is concerned. These schools had been very meagerly supported, and their appropriations have always been a great bone of contention in the Legislature. After a number of stormy sessions, the

Legislature of 1909 abolished all the Normal Schools of the state, and left it to the different institutions to go before the people for support. This opened up what was known as the Normal School Issue and gave the people an opportunity to express themselves favorably to the policy of either one central Normal School or of a number. Influenced very largely, no doubt, through the controversies which the Legislature had indulged in, and by the fact that none of these schools while they were running had received adequate support, the people determined to try out the one central Normal School plan. As the consequence, Monmouth, the oldest one and the one nearest the center of population was selected, and the schools at Weston and Ashland were abolished. The wisdom of the decision in favor of but one Normal School is still questioned by a good many Oregon voters, but there is certainly nothing in the decision reflecting upon their intelligence.*

The next amendment defeated was one providing for state wide prohibition. The Local Option Law to which I have referred seemed to have given general satisfaction, placing as it did the power with each community to decide the issue for itself. Through the operation of this law, the prohibition forces gained considerable strength; one county after another in the state going dry, and an attempt was finally made,— which, considered from the standpoint of the temperance people, was an unfortunate move,— to vote the whole state so. Th Local Option measure when it favored either side favored the prohibitionists. A good many people wh were favorable to the Local Option Law resente the movement for a dry state. This together wit a thoroughly organized campaign on the part of th liquor interests resulted in the defeat of the stat prohibition measure by over 17,000 votes. Th campaign was hotly waged. In addition to the endeavor to make the state dry, the temperance people had initiated another bill prohibiting the sale o liquor and providing a search provision, and yet another regulating the shipments of liquor into a dr territory. The attempt to carry two bills, one o which was really in violation of the principle of th Local Option Law which had done so much for th temperance people of the state, helped bring abou the defeat of the measures.

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* See Note 9.

Another bill that was defeated by the elector by nearly 20,000 majority, was one providing fo the creation of a board to draft an Employers' Liability Law to be submitted to the Legislature. I should be remembered that the people during th election of 1910 had submitted a bill for the protection of laborers engaged in hazardous employment, fixing the employers' liability. This measur had a very strong backing by organized labor. Th friends of labor throughout the state considered tha this movement providing for the appointment of the commission was meant to detract from the strength or from the support of the liability bill which they had initiated, and as a consequence they fought it vigorously. The result was that the Liability Law passed, and the act providing for the appointment of a commission failed.

The next bill to be turned down was one providing for a general law under which new counties might be created or boundaries changed. The majority against this bill was about 5,000 votes. The bill was one which provided that upon a petition of thirty per cent. of the voters in the territory affected, a commission should be appointed to investigate the merits of the proposed political unit and, if favorable, establish lines, etc., and make way for the organization of the county.

The careless optimism of the supporters of the many new counties whose fates were to be decided in the same election, together with the opposition of those who were opposed to the secession movement specifically and on general principles may be reasonably considered as the main cause for the defeat of the bill.

Another measure to be defeated was a bill creating a Board of People's Inspectors of government providing for a report of boards and for an official statement to be mailed to all registered voters bimonthly. This bill is so unique even in Oregon that it affords material for a study of legislation possibilities. With mention of the fact that the expenses incurred by the bill would probably amount to $150,000 a year, the question as to whether or not the people exercised wisdom in their decision on this matter will be left to the reader who may take pains to read it.

The last constitutional amendment defeated was one extending the Initiative and the Referendum; making terms of the legislators six years and increasing the salaries; requiring proportional representation in the Legislature, and the election of the Speaker of the House and President of the Senate outside of the membership; etc.* There were doubtless many features in this bill to commend it to the public, but the measure attempted a thorough revolution of the political policies of the state, overlooking entirely many of the real causes of defects in the system. These facts together with the one that it was a very long and complicated amendment presented on a ticket containing thirty-two measures, many of them difficult and complicated, will no doubt partly account for the decision of the people not to adopt this reform at this particular time. The majority against it was about 7,000 votes.

SUMMARY OF DEFEATED MEASURES.

This, then, concludes the list of the thirty-three measures which the people of Oregon have rejected in the past four general elections. Since we are to eliminate these measures from further consideration, we may profitably take time now to summarize their characteristics and their significance.

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* See Note 10.

In connection with the equal suffrage vote we find nothing new or different. In connection with the vote on the liquor question we find that the people established what they called a Local Option Law, and when this was once established, they voted down endeavors to amend or change it, showing a disposition to have it first thoroughly tried. In the case of the Mt. Hood and Barlow Road we discover that a trick measure was imposed upon the electors through a misleading title, which fortunately was discovered and the measure defeated. We find that the electors did not feel justified in increasing the pay of the legislators when nothing else was offered in the way of improving the character of that body, and also turned down with a vote that could not be misunderstood the proposition submitted to them by the Legislature by which the railroads would be compelled to issue free passes to state officials. In connection with the amendment proposed to make a radical change in our court system, we observe apparent lack of information sufficient to guide the electors in coming to a satisfactory decision. An inclination to save money is indicated through calling the Referendum on the one hundred thousand dollar Armory Appropriation Bill and defeating it. We see another exhibition of the con servatism of the people in rejecting the measur which would have meant a radical departure in ou system of taxation, by voting down an amendmen which at that time the single taxers were fran enough to indicate was a step in the direction o single tax.

In initiating and carrying the constitutiona amendment requiring a referendum on all proposal to call a constitutional convention, the determina tion was to safeguard the power of the people i direct legislation on constitutional measures. strong reproach to the Legislature is administere in the vote which refused to accept that body's prop osition to divide the state into separate representa tive and senatorial districts, which proposition wa submitted to them after they had refused to provid legislation necessary to establish the amendmen formerly passed providing for proportional repr sentation. Another strong mark of conservatism and precaution against increased taxes and additiona expenditures was registered when the people de feated the proposition empowering districts to bon themselves for the purpose of making railroad In the case of two of the constitutional amendment submitted for the purpose of permitting the state t follow out its policies of taxation, there was an ap parent ignorance on the questions involved, for tha or the lack of interest resulted in the defeat of tw measures which could scarcely have failed if thoroughly understood. We notice an undue interest and inclination on the part of the Oregon electorate to decide upon the question as to what the Circuit Judge of Baker County district should receive for his salary. On other local measures, however, we find them showing a decided impatience in being called upon to act on something which does not concern them and about which they do not feel informed. This is clearly shown in the case of the eight county measures submitted to them by the Initiative, all of which they turned down by overwhelming majorities.

Remembering the unsatisfactory experience of the Legislature with the three Normal Schools, we find that the people have determined to select one of these and try out thoroughly the question of the policy of the one central Normal School. When the prohibitionists of the state, who really had an advantage under the operation of the Local Option Law established in 1904, attempted to make the whole state "dry," the people administered to them the same treatment they administered to the liquor people when they attempted to overrule the Local Option Law. The General County measure which gave practically thirty per cent. of the voters of the affected district the power to determine the formation of a new county or the establishment of new county lines was defeated, it would seem, largely by the combined votes of the many localities which during the election of 1910 opposed projected counties. And lastly, in the defeat of two radical measures,— one providing for the creation of a Board of People's Inspectors, and the other reorganizing the State Legislature,— there is to be seen a desire to keep the expense of the state down together with a refusal to experiment with new untried measures. The possible explanation for this latter attitude is because Oregon had already adopted so many new plans that it was not considered wise to take everything simply because it appeared on the ballot. In these rejections, there is possibly a protest against such a long ballot, including the submission of what must have seemed superfluous measures at this time. Moreover, it is probable that the policy of a good many thousand voters of the state in voting " no " when in doubt had a good deal to do with the rejection of these two measures.

In such rejecting the people have undeniably used discretion in their decisions; but even to one whose confidence in the honesty and wisdom of the people is unbounded, a few disadvantages amounting to political evils must be apparent. Entirely too many measures have been submitted; trick measures have slipped in through deceitful headings or titles; several measures have been submitted repeatedly in the face of overwhelming defeat; general ignorance of certain measures has prevailed due partly to the multiplicity of measures on the ballot, and partly to the fact that these particular measures were complicated and technical; an undue inclination on the part of some of the people has been shown to cut down the expenses of certain communities in which they have no interest, seemingly wanting to express themselves for economy, at the same time not knowing just what economy may be in these communities; and, especially in the election of 1910 there were entirely too many local measures on the ballot. These conditions will be considered in another chapter.

CHAPTER VI

THE THIRTY-ONE MEASURES ADOPTED BY THE PEOPLE

OF the thirty-one measures adopted by the people in the four Oregon elections,— twenty-five having been submitted by the Initiative, three by the Referendum, and three submitted to the people by the Legislature,— thirteen were constitutional amendments, and eighteen were statutory measures.

The adopted measures are as follows:

1904.

Direct Primary Law with Election of U. S. Senator. (I)

Local Option Law. (I)

1906.

Omnibus Appropriation Bill. (R)

Amendment Requiring Referendum on any act calling for a Constitutional Convention. (I)

Amendment giving Cities Sole Power to Amend their Charters. (I)

Legislature authorized to Fix Pay of State Printer. (I)

Initiative and Referendum to Apply to Local Laws. (I)

Prohibiting Free Passes. (I)

Gross-Earnings Tax on Express, Telephone and Telegraph Companies. (I)

Gross-Earnings Tax on Refrigerator and Oil Car Companies. (I)

1908.

Amendment permitting location of State Institutions, at places other than the Capital. (L)

Amendment changing General Election from June to November. (L)

Giving Sheriffs Control of County Prisoners. (R)

Increasing Appropriation of University of Oregon. (R)

Fishery Bill Proposed by Fish Wheel Operators. (I)

Fishery Bill Proposed by Gill-Netters. (I)

Recall Power on Public Officials. (I)

Instructing Legislators to vote for people's choice for Senator. (I)

Amendment Authorizing Proportional Representation. (I)

Corrupt Practice Act. (I)

Amendment Requiring Indictment by Grand Jury. (I)

Creating Hood River County. (I)

1910.

Establishing Eastern Oregon Insane Asylum. (L)

Establishing Normal School at Monmouth. (I)

Amendment giving Counties Regulation of Taxes. (I)

Amendment Giving Cities Regulation of Liquor Traffic. (I)

Employers' Liability Law. (I)

Prohibiting Fishing on Rogue River Except with Hook and Line. (I)

Amendment Permitting Counties to Vote Bonds for Permanent Roads. (I)

Presidential Preference Primary. (I)

Amendment Permitting Three-Fourths Verdict in Civil Cases. (I)

We can economize our time and space in the consideration of the measures which the people have adopted if we eliminate first those of comparatively little importance. Under this head we will take out first the constitutional amendment passed in 1908 changing the date of the general election from June to November. The purpose of this change was not only to make the Oregon elections conform to that of other states, but to lessen the expense of both the general and presidential elections by bringing them on the same day. Another amendment made to patch up the old Oregon Constitution was one providing for the location of the state institutions at other points than the capital. For years the University of Oregon, the Agricultural College, the State Normal Schools, and the Soldiers' Home had been located at other points than the capital, and in order to legalize their position, this measure was passed in 1908. We may also add to the list of unimportant acts the one creating Hood River County. Although this was a measure that had caused much dissension in the Legislature for at least two sessions, yet when the time actually came to vote on it, the opponents of the new county had ceased their opposition, and when both sides came to an agreement, the political issue was eliminated. Hence, it is from the standpoint of disposition made of this measure, that it is here listed with the unimportant ones.

This will leave us twenty-seven measures to consider more in detail. A number of these no doubt will appear unimportant to the reader, but since there are certain observations in connection with each one which will help explain the workings of direct legislation in Oregon, it seems necessary to consider them all. We shall treat the measures that have been adopted in much the same manner as we did those which have been rejected; that is, we shall take them up for discussion in about the order in which they appeared on the ballot for the voters' decision. When we have analyzed each measure and given it its due consideration, we shall then summarize our observations in order to form what conclusions we may from the experiences of the Oregon electorate in connection with the measures which they have adopted.

ELECTION OF 1904.

In the election of 1904, the first measure submitted to the people for their decision was the Direct Primary Law, or as it is often called, the Direct Primary Law with the provision for the selection of United States Senator by the people. While this was an entirely new proposition for the people of Oregon, over seventy-five per cent. of the voters registered their opinion on it and the measure carried by a vote of 56,205 to 16,354. Previous to the adoption of this law the method used for the selection of candidates for different offices was through the political convention. By this procedure all the candidates for an office would go before the party convention where the nominations for the offices would be made. The unsuccessful candidates were then eliminated, leaving the field open to the choice of the convention. The Primary Law changed this by substituting for the convention the direct primary or the primary election for the purpose of selecting party candidates, in which all the members of the party had a voice as opposed to the convention in which only delegates determined the nominations.

An important feature of the Primary Law was that known as Statement No. 1, which provided for the election of United States Senator by the people, and which is a pledge which the candidate for the Legislature signs agreeing to vote for the candidate for Senator who receives the highest vote by the people. The different candidates for Senator go before the people for endorsement both in the primaries and general elections just as other officials do.

The Primary Law and the election of Senators by the people are considered in full in other chapters.

The other measure adopted by the people in the election of 1904 was the Local Option Law. Through the provisions of this measure the people of a town, a district of a county, could by a majority vote prohibit the sale of liquor in the particular territory affected. The law is sometimes referred to or was sometimes referred to and quite properly, as the County Local Option Law.* Through its provisions in case the municipality and the county voted at the same time on the saloon issue, the county voting " dry " and the municipality " wet," both the county and the municipality went dry; while if the reverse happened, the municipality would go dry, and only that portion of the county that voted " wet " would go wet. The law seemed to give general satisfaction. The fact is that many people who had formerly been opposed to prohibition in small localities, and who were opposed to state prohibition, joined in with the temperance people in the support of the Local Option Law, and as a consequence, a majority of the counties of the state became dry through its operations. The temperance people in 1910 initiated a bill to make the whole state dry, and this move aroused an unpopular sentiment which the liquor interest was prompt to take advantage of, initiating a bill to do away with the old provision that whenever a county voted dry the municipalities should also become dry, and won, so that the strongest feature of the Local Option Law was annulled.

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* Treated of on page 41.

ELECTION OF 1906.

We now come to the election of 1906. The first use of the Referendum under the system of Direct Legislation was employed in referring to the people what was known as the Omnibus Appropriation Bill; that is, the appropriation bill for the different state institutions including the asylum, penitentiary, blind and mute schools at Salem, the Oregon Agricultural College, the University of Oregon, the Soldiers' Home and the three Normal Schools. Had the people of the state sustained the Referendum and thus nullified the appropriations that were made, it would have worked great injuries to the different institutions. As it was, a great deal of suffering was the result of the Referendum, and the institutions which deserved better consideration were greatly hampered in their work. There were a number of cases in which the employees of state institutions and the instructors in the different educational institutions were compelled to serve on one-half and one-third pay with the understanding that if the appropriations were not sustained by the people, they would have to suffer the loss. As a consequence some of these educational institutions lost some of their best instructors, and a great deal of expense was incurred by the state which otherwise would have been avoided. Harsh as was this experience, it had one advantage,— an advantage which I think of great importance and one which it is hoped will be permanent: — It had been the custom of the Legislature in times past to throw all of their appropriations for different state institutions, etc., into one bill called " The Omnibus Appropriation Bill." The University of Oregon, which on account of meager funds suffered a great disadvantage and loss through this referendum concluded that whenever it asked the state for an appropriation, that appropriation would stand or fall on its own merits. Therefore, at the next session of the Legislature, the University of Oregon initiated the policy of presenting its bill separate and distinct, determined that it would not hamper the interests of any other institution nor be hampered by any other institution in the matter of its appropriations. The Oregon Agricultural College and other institutions followed suit in this respect; and as a consequence, each bill passed the Legislature separately as it ought to have done.

It might be mentioned here that the University of Oregon has received a questionable mark of appreciation for the independent stand that it took; for since the adoption of the system of direct legislation, or rather since the people have had the power of referendum, they have never failed to exercise it upon the University of Oregon. However, its experience in connection with the Referendum will be given more fully in another place.

The next measure passed by the people, and the first constitutional amendment to be made by them under the direct system of legislation, was an amendment requiring the Referendum on any act calling for a constitutional convention. The fact that there was a strong and yet unmeasured opposition to the system of direct legislation in Oregon as well as to other features of the Oregon System which had been adopted, led those who were most interested to the conclusion that a constitutional convention at this time would be an undesirable thing. Such a convention, they argued, might result in a loss of the gains already made by them, and they were not inclined to risk the possibility of having any provision placed in the constitution which would weaken the work already begun. Therefore, when the opportunity came to vote on this amendment which would require that at any time in the future any act calling for a constitutional convention should be first referred to the people for decision, there were 47,661 votes favorable to the amendment and 16,751 against it. A little over seventy-one per cent. of all the voters cast their ballot on this measure. We have already observed that when the Legislature pased a joint resolution calling for a constitutional convention in the session of 1909 and under this amendment it was referred to the people for decision, they voted it down by a majority of over 36,000.

The next constitutional amendment passed in the election of 1906 was one giving cities full power to amend their charters. The previous provision of the constitution had been one through which the Legislature amended the charters of our cities. In consequence, there was a biennial contest in the State Legislature, especially on the amendments of the charters for the city of Portland; and this, supplemented by the controversies arising through the necessities of amendments to the charters of other cities, gave the Legislature a great deal of local work to do — work in which a great many of the members were not interested and upon which they were not informed. In the larger cities, especially Portland, it seemed absolutely impossible to get a concensus of opinion from the people of the municipality as to what they really wanted. An amendment which would place it within their own power to make their charter amendments would not only seem to be a benefit to them but also a great benefit to the Legislature, relieving it of much work upon which it was incompetent and unwilling to pass. That there are some disadvantages to this provision there can be little question, but the counter advantages to both the municipalities and to the Legislature will be accepted at once as far outweighing what argument can be brought against it.

The next measure passed was an amendment authorizing the Legislature to fix the pay of the State Printer. For many years the state printing office had been the source of great wealth to that official. Under the old provisions of the constitution he was perfectly protected, having not only the power to do whatever he chose, but to profit from anything which passed through his hands. The constitution established prices which were based upon old and worn-out methods of composition and printing, and these the State Printer continued to collect in spite of the fact that he had the great advantage of modern machinery and methods. To apply the word "graft" to this department would not have been too strong an adjective. To place this matter then in the hands of the Legislature was the purpose and the effect of the measure initiated by the people and carried by a favorable vote of 63,709 to 9,571 against. Over seventy-eight per cent. of the electors registered their opinion upon it.

The next measure was one by which the Initiative and the Referendum were made to apply to all local, special and municipal laws. This was a people's power measure, making its application to even the smallest communities, just as these principles had been extended to the state and larger communities by the constitutional amendment adopted in 1902. This is one of the measures to which there is little objection excepting in the city of Portland where its operation has resulted in some evils which we will later point out,—evils which arise from the machinery of legislation rather than from the principles of it.

The next measure was a bill prohibiting free passes on railroads to state officials, a bill which has already been discussed to some extent, and one in which its intentions and advantages were so apparent that it need not be dwelt upon here.

The last two measures passed in 1906 were those providing for a gross-earnings tax on sleeping-car, refrigerator-car, and oil-car companies; and for a gross-earnings tax on express, telephone, and telegraph companies. Over 81 per cent. of the electors gave their opinion on the first measure, 69,634 voting for to 6,441 opposed. The next measure was decided by over 82 per cent. of the voters with

70,782 votes favorable to 6,360 against it. In point of figures these measures have been the most decisively settled of any yet submitted to the voters of Oregon.

At the time of the passage of the gross-earnings tax bill on sleeping-car, refrigerator-car, and oil-car companies, and also on express, telephone, and telegraph companies, the state was getting practically nothing from these concerns in the way of taxes; they were, however, doing thousands of dollars' worth of business in Oregon every year.*

ELECTION OF 1908.

Taking up the measures passed by the people in the year 1908, the first one of importance is the bill increasing the fixed appropriation for the State University from $47,500 to $125,000 annually. This bill passed the House and the Senate but was vetoed by the Governor of the state. The needs of the University were made so plain to the members of the Legislature that the bill was again passed, this time over his veto. But some individuals succeeded in working up an agitation against the University and called a referendum on the bill. The attempt was made to get the support of the different granges of the state and the state grange behind the movement of the Referendum. Here and there a grange declared for the Referendum, but the majority of them passed resolutions against it, and the state grange refused to have anything to do with the matter. However, funds were raised by one or two energetic workers who pressed the issue until they secured sufficient signatures to place the measure upon the ballot for the decision of the electors at the next general election two years later. Under these circumstances the State University was greatly crippled for want of funds thus held up by its enemies for two years. All the instructors were obliged to work on small allowances with the agreement that if the bill did not pass they would lose the portion of their salaries which could not be paid. An active campaign was waged, led by the members of the alumni who, after much effort, succeeded in placing the measure before the people in such a way that it won, though only by a small majority.

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* See Note 11.

Eighty per cent of the voters registered their opinion on this matter and in the total vote consisting of about 85,000, the majority was a little over three thousand for the measure. The writer had occasion to follow this campaign very closely and does not hesitate to say that it was purely a campaign of prejudice. Many misstatements of facts were made, and those who had the campaign against the institution in charge refused to come to the University as they were invited to do and investigate for themselves the need before launching the Referendum. It is significant that the people who were behind the movement were paid for the work which they did and none of them ever saw the University of Oregon until after the Referendum was filed. Practically all the work that I know to have been done against the University in this campaign in connection with the Referendum was done for pay, the solicitors receiving a stipulated sum for each name secured. These abuses of the Referendum were augmented by the fact that when it came to preparing the material which was to appear in the Voters' Pamphlet both for and against the bill, the friends of the University were compelled to file their statement first and when those who favored the Referendum filed theirs, it was too late to make answer or to make any corrections, although the promoters made a number of statements that were entirely misleading and untrue.*

The advocates of direct legislation look upon the ratification of the University Appropriation Bill by the people as a splendid tribute to the intelligence of the electorate and of their interest in education, and an article by an advocate of direct legislation scarcely ever appears without laudation of the people for the stand they took on this particular measure. A majority of 3,000, however, in a total vote of over 80,000, though it makes the result a matter for congratulation because of the narrow escape if for no other reason, is hardly a sufficient reflection upon the accomplishments of the Referendum to dwell upon at length. The University on account of the invoking of the Referendum would have been compelled to close its doors had not the people stood by it.* This campaign which was waged so hotly on both sides, pointed out clearly a number of defects in the law which ultimately must be remedied or the greatest damage will result not only to the educational institutions, but to the institution of direct legislation itself.

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* See Note 12.

The next measure to be referred to the people and carried in 1908, was one giving the sheriff the control of prisoners in Multnomah County, and establishing regulations for working and feeding the prisoners. Although a local bill, it had considerable merit, especially since it established the price of a prisoner's meals at twelve and one-half cents and thus eliminated an unjustified source of income to the county sheriff through high charges for furnishing cheap meals to county prisoners.

The next two measures which were initiated and favorably passed upon by the people we can consider together. They are known as the fish bills. Fishery legislation has been an unsatisfactory issue in the Legislature for many years, and probably always will be because of these conflicting interests which between them threaten to annihilate the salmon industry. It should first be understood that the modes of fishing on the Columbia River may be roughly classified as two — the fish wheel and the gill net. The first method is employed by the upper river fishermen, the other by the lower river fishermen. Of course the fish which the latter catch do not get up to the fish wheel; of those which do reach the wheels, practically all are caught. Fishermen of the upper river saw an opportunity to use the Initiative to their advantage, and so they got up a bill restricting or practically shutting out fishing with nets on the lower river. The feeling of antagonism toward the lower river fishermen was thoroughly reciprocated by those individuals themselves, and they therefore immediately prepared an initiative measure to cut out fish wheels in the upper river. Thus two measures advertised by the advocates of each as for the protection and propagation of the Columbia River salmon appeared on the ballot at the same time. The people were just familiar enough with the issues to understand that if the gill netters were put out of business, that the fish wheel people would get the fish, and that if the fish wheels were put out of business the gain would be to the gill netters, but that in either or both cases, if the measures did not pass, the salmon industry would continue to suffer; and so the unforeseen but somewhat fortunate result was that the people voted for both bills, thus cutting out for awhile at least the fishing on both the lower river and upper river. At the next session of the Legislature, this industry which had been somewhat interfered with received a solution at the hands of the Legislature, and little harm or little good has resulted from the legislation by the people on this matter.

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*See Note 13.

The two fish bills might have been classified in the list of those of comparatively little importance had it not been for the fact that invariably they are referred to by both the staunch advocates of the system of direct legislation and the strong opponents of it. For instance the supporters of direct legislation point to the action of the people in regard to these fish bills stating that a recreant Legislature had failed to do anything in the way of legislation for many years, and that through this neglect the salmon industry was threatened with annihilation. As a result the people initiated measures and refused to let either the upper or the lower fishermen fish, and brought about a condition which compelled the Legislature which had been so negligent on this subject to enact measures that looked to the protection of the great industry. This, therefore, was a great gain to the state of Oregon, and shows what the people will do when the Legislature will not.

But when the opponents of the system of direct legislation take hold of the fish bill argument they make an entirely different story out of it, to this effect: that merely for spite work one class of fishermen endeavored to put the other class out of business, and as a measure of retaliation the other class endeavored to put the first class out of business, and the people in their ignorance of the whole situation carried both bills, thus crippling the great fishing industry of the state which would have been entirely destroyed had it not been for the successful intervention of the Legislature which happened to meet a few months after the bills were passed. Here, then, was a case in which the Legislature not only unraveled the complicated knot which the people had tied, but saved a great and important industry from immediate annihilation.

For our purpose it will be satisfactory for both the advocates and the opponents of direct legislation to get off with whatever glory they can in the solution of these fish problems as made by the electors. The significance of the whole experience is that in this case the Initiative was used by each fish party not for the benefit of the whole people or for the perpetuation of such an important industry as that involved, but to put the other fellow out of business in order that the selfish interest might be able to pile up its profits.

It was in 1908 that the people passed an amendment to their constitution providing for the recall of public officials. Whether or not we agree with the recall, we cannot overlook the importance of the action in making it part of the Oregon political system. Through its provision the constituents of an office holder can demand a new election whenever twenty-five per cent. of them will sign a petition for that purpose. The Attorney-General of the state has given his opinion that the recall to be effective must have some supplementary legislation by the Legislature. Before this opinion was rendered, however, several experiments under the new amendment took place and recall elections were indulged in to a sufficient extent to demonstrate how the system works in Oregon. A special chapter will be given to this important amendment.*

The next measure passed by the people was an act to make compulsory the signing of Statement No. 1. While the constitutionality of the act may be questioned, the effect of it has been practically what the advocates thought it would be. The overwhelming majority by which it was adopted shows that the people of the state of Oregon are strongly in favor of the direct election of the United States Senator by them as provided for in the Statement No. 1 pledge. At any rate the opposition to the Statement is gradually decreasing. It is not unreasonable to suppose that the day is not far off when there will be no further issue on this question.

The submission of the above question may be regarded as practically an advisory vote upon an issue concerning which there may have been some doubt as to the wishes of the people. It would seem wise at times to have votes taken that are of this advisory nature.

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* See Chapter IX.

The next measure passed by popular vote we shall simply mention because, although the people have passed upon it, the Legislature thus far has not provided the necessary legislation to carry it into practical operation. It carried in the form of an amendment authorizing a proportional representation law.

The next issue may be numbered among the fortunate ones initiated by the people. In 1908 reforms came thick and fast, and among them was the Corrupt Practice Act to which reference has been made. The act is a very long one and would therefore require too much space to print it in full, but it is of such importance and significance that it is made the subject of a special chapter.*

The last measure passed by the people in the 1908 election was a constitutional amendment providing for the choosing of jurors and grand jurors and requiring indictments by grand jury only. There was no opposition to this measure and it carried easily.†

ELECTION OF 1910.

We now come to a consideration of the measures passed by the people in the last election, that of 1910, of which the first was the bill selecting Monmouth as the home for the State Normal School. It will be remembered that the Legislature of 1909, — much to its discredit as some think,— took upon itself the solution of the question of maintaining normal training schools in the state of Oregon by literally wiping off the statute books everything pertaining to the three schools located at Ashland, Monmouth, and Weston. All these schools were doing fairly good work, especially in consideration of the meager support afforded them. The dodging of the issue and putting it up to the people to make the decision was an unfavorable reflection upon the ability of the State Legislature which showed a desire to shift an important responsibility which it should have settled itself. But when the support for each school was withdrawn, there was nothing left for the friends of the different institutions to do but to initiate measures favorable to the reëstablishment of each, and this was done. The result was that each of the schools appeared on the ballot of 1910 practically asking for reinstatement. The Monmouth Normal School was not only older than either of the other two, but had an excellent working alumni organization. Moreover, it was located near the center of an interested population, and this fact, together with the effectiveness of the campaign, determined the decision of the people in its favor as the one normal school. A working arrangement had been effected between the advocates of the Monmouth School and the labor unions to exchange support, some of the labor union leaders promising support to the normal school if the normal school in turn would support the Employers' Liability Act. Later on, one of the same labor leaders who was instrumental in making the trade secured the petitions against the $50,000 appropriation which the Legislature of 1911 made for a new building at the Monmouth Normal School.

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* Chapter X.

† See Note 14.

The next measure passed in 1910 was one now generally referred to as the Single Tax Amendment, so-called because it was a most effective step toward establishing the Single Tax in Oregon, designed for that purpose by the employees of the Fels Fund devoted to such propaganda. The amendment takes out of the hands of the Legislature the power to pass tax legislation, giving that power to the counties entirely.* More space is given to this issue in the chapter on Evils and Dangers of Direct Legislation.

The next measure, commonly known as the Home Rule Amendment, marks the success of the liquor interests against those who were in the campaign for a dry Oregon. The fight was begun in 1904 when the county or Local Option Bill passed. Its relation to similar legislation was explained under the chapter on Rejected Measures. It gives cities the regulation of the traffic so that when a county goes dry, the municipalities do not necessarily go dry also. The strongest feature of the Local Option Law was thus annulled.

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*See Note 15.

The Employers' Liability Act, secured through the Initiative by the labor interests of the state, is a new experiment for Oregon, and it is perhaps too early to make very accurate observations upon its advantages and disadvantages.* The significance of its passage, however, is that the labor interests when once well organized, concentrating their attention and energies upon the passage of a bill, can sometimes secure legislation which they might not be able to get through the Legislature.

The Initiative has also increased the power of labor organizations in the Legislature. A good example of this was shown in the session of 1911. An Employers' Compensation Act was introduced in this session and its provisions met with such favor that its success seemed assured. But the labor interests opposed the bill, contending that it would conflict with the Initiative measure to which we have referred, namely, the Employers' Liability Law, and they asked that the bill be defeated. The bill was defeated, a result directly traceable to the prestige which the Initiative Bill had gained for the labor organizations.

The next measure passed by the people was one prohibiting fishing in Rogue River or in any of its tributary streams except with hook and line. This bill was the subject of contention between what might be termed the fishing public on the one hand, and the fishing industry on the other. Rogue River is an excellent trout stream, and a great attraction to tourists and to many Oregon people, who are fond of angling. Mr. R. D. Hume owned and operated canneries and hatcheries along the river which afforded employment to a good many fishermen and represented an investment of probably a quarter of a million dollars. To stop this fishing in Rogue River meant the practical destruction of this industry. Rogue River is considered in Oregon second only to the Columbia River as a salmon stream. It appears that the weak feature of the bill which passed,— that is, the element of injustice in it,— was that it took no consideration of the property interests along the river. If some provision had been made giving those whose property rights had been affected some consideration instead of subjecting them to a great money and property loss, it seems that the passage of the bill on the whole would have been more just and satisfactory.*

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*See Note 16.

The next measure to be decided in the affirmative by the people was one permitting counties to vote bonds for the construction of permanent roads. Road legislation in the Oregon Legislature for the past few years has been very unsatisfactory in its results, although earnest endeavors have been made to secure good road laws. But on account of the different physical characteristics of the several sections of the state, which would make impossible the uniform application of a general law, and also on account of the great expense which a general road-building law would entail, it has seemed impossible to arrive at any satisfactory agreement for a state wide plan. And yet good highways are probably the greatest single need of Oregon.

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* See Note 17.

In response to this great demand the Oregon Good Roads Association proposed an amendment to Section 10 of Article 11 of the State Constitution, permitting counties to incur indebtedness beyond $5,000 to make permanent roads, and further providing that indebtedness for permanent roads may be incurred on approval of the majority of those voting on the question. Up to this time the bonding limit established by the constitution was $5,000, which was decidedly inadequate for the purpose of the construction of good roads. Although this measure did not carry by the majority which some have received, its advisability on the whole cannot be questioned, and through its provision, the good roads movement in Oregon has taken a step forward.

The passing of this constitutional measure illustrates well the directness of the Initiative. The old system would have required that the Legislature pass twice upon the bill and that the people ratify it, but this amendment was initiated and passed and became a law in the course of a few months.

The next measure passed was one extending the Direct Primary Law to the national officers. For the first time, Oregon voters in April, 1911, cast their ballots directly for the candidates for President and Vice-President. The Presidential Primary Law will be treated in a special chapter.*

We now come to the consideration of the last measure adopted by the people, namely: "A constitutional amendment providing for verdict by three-fourths of the jury in civil cases; authorizing grand juries to be summoned separate from the trial juries, permitting change of judicial system of statute, prohibiting retrial where there is any evidence to support verdict; providing for affirmance of judgment on appeal notwithstanding committed in lower court, directing the Supreme Court to enter such judgment as should have been entered in the lower court fixing the terms of Supreme Court; providing for judges of all courts to be elected for six years, and increasing the jurisdiction of Supreme Court." Although this is a far-reaching amendment and one in regard to which several of the best lawyers of the state confess that they do not yet appreciate just what its results will be; yet, in spite of its complexity, the people passed upon this measure as readily as though it were one of the popular sort and understood by all. The one provision which they did understand was that a verdict might be given by a three-fourths jury in the case of civil suits.

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*See Chapter XI.

The entire amendment like a number of other measures which we have observed, was one with which the people were really not familiar, and one upon which they probably would have preferred not to pass, a conclusion justified by the fact that this amendment was carried by only thirty-seven per cent. of the votes cast. Since the ballot always contains a good many measures, this experience shows that every measure should be as plain in statement and as easy of solution as possible. These observations do not question the right of the people to express themselves nor do they reflect upon the intelligence of the Oregon electorate. No one will question the fact that the people have a right to decide upon a measure in any way they please, but no one will contend that a measure is settled right simply because a majority happen to favor or oppose it. And, moreover, admitting the intelligence of the people and their inclination to do the right thing — especially in the state of Oregon where the voting population consists of an unusually intelligent class of men — we cannot consider it a fortunate thing that measures are placed upon the ballot which are not understood by lawyers themselves and an understanding of which can only be arrived at after such measures have been put into practical operation.

SUMMARY OF ADOPTED MEASURES.

We will now proceed to review the thirty-one measures which the people of this state have adopted, considering the advantages and disadvantages of the measures themselves, and the methods used both in placing them before the people and in getting a decision upon them.

The Direct Primary Nomination Law, which undoubtedly has shortcomings and disadvantages, is on the whole a reform which the people of Oregon were amply justified in securing for themselves. The Local Option Law was a measure which placed the responsibility for the solution of the liquor question on those directly interested, that is, the communities affected. This relieved the Legislature of a very burdensome issue. The vote on the Omnibus Appropriation Bill sustained the Legislature, but it was largely through the selfishness rather than the unselfishness of the interests affected; and although we may read between the lines in this decision a demand on the part of the people that appropriations be presented separately, yet this cannot be considered sufficient protection against the great danger and disadvantage to the state and its institutions through thoughtless or prejudiced referendums on appropriation bills. It would seem that a better way to reach the state budget would be through the legislators, who in Oregon are chosen directly by the people. This is the method employed in Switzerland. We notice a justifiable precaution in the amendment which requires that any proposition for a constitutional convention be referred to the people before the convention is called, and a great gain to cities and a corresponding load lifted from the shoulders of the Legislature by a constitutional provision giving cities a right to amend their charters.

We see an endeavor to conserve the taxpayers' money and at the same time secure proper regulation of a state official by an amendment authorizing the Legislature to fix the pay of State Printer. The extension of the Initiative and the Referendum to local bills with their application to smaller as well as to larger political units of the state is a long step toward peoples' power and direct participation in law making. The measure prohibiting free passes seems to many to have but one side and that a favorable one. The people took the Initiative in taxing the sleeping-car, oil-car, and refrigerator-car companies, the telegraph and telephone companies, through the passage of the gross-earnings tax on both concerns which is in keeping with progressive taxation employed by other states in the Union.

The decision locating the state institutions at other points than the state capital was merely a formal matter, a sort of ratification of what had previously been done, as was that of changing the date of the general election from June to November. Giving the sheriff control of prisoners in Multnomah County centered responsibility on local officials and affected a saving to the taxpayer. The result of the Referendum on the University of Oregon Appropriation Bill was an expressed protest against the efforts to hamper educational institutions through the Referendum. But in the workings of this referendum features can be seen which, if not corrected, will stand always as a menace to state institutions. In the passage of the fish bills there was a war of interests which for solution called in the electors of the state who did about all they could by restricting both. In the Recall and Compulsory Statement No. 1 we recognize more power for the people. In the amendment requiring indictment by grand jury we advance a step toward better conditions and more protection to the individual, and in the creation of Hood River County we find the people voting for an undisputed issue. The selection of Monmouth as the State Normal School, although the selection may have been partly due to the location of the town, may also be considered as partly due to an inclination to have a centrally located single normal school, as opposed to a system of three normals.

The success of the single tax is clearly a case of a joker in the amendment. The amendment giving to cities and towns complete control of the sale of liquor, etc., was a vote of conviction. That permitting a county to bond itself for more than $5,000 for the construction of permanent roads was perhaps the one constitutional amendment passed in 1910 for which there was a demand. The Presidential Primary Law was an extension of power to the electorate to participate more in government and the result was the strengthening of the Oregon Primary. The Judicial amendment, one of the many provisions of which permitted a three-fourths jury verdict in civil cases, was a complex and far-reaching one, the effect of which no one yet understands. And yet it serves as a good example of how important and revolutionary measures are sometimes carried by voters who find in the complex mass a single familiar or intelligible phrase and seize upon it with pardonable avidity. The reflection, however, is upon the machinery of legislation rather than upon the legislators.

Before proceeding with the chapters dealing with the good and the evil results of the direct legislative system, we shall now profitably give more space to the consideration of the following important and interesting subjects which we have passed over lightly: The Oregon Primary Election, the Election of Senators by the People, the Corrupt Practice Act, and the Recall of Public Officials.

CHAPTER VII

THE OREGON PRIMARY LAW

THE Oregon Primary Law, the first to be passed by the people through the power conferred by the Initiative and the Referendum amendment, was enacted in 1904. It was designed as a substitute and a successor for the political party convention. Previous to the time of this enactment candidates for office were selected by conventions. The convention system naturally developed leaders, some of whom came to be arbitrary bosses, and in time Oregon became a typical machine state. The stronger parties were well organized, the machinery well oiled, and the engineers usually in absolute control. The occasional breaking through of an independent was only an exception to prove the perfection of the machine organization.*

It is only just to state that in the convention system, Oregon's ablest citizens and best men participated. To draw the gloomy, one-sided picture of the convention as an enemy of the people, and as the subservient tool of the corporations would be as unjust as it would be untrue. But in spite of the high ground taken by many an Oregonian, the convention often deteriorated into an arbitrary machine, controlled by certain cliques and special interests. Candidates were selected for places of favor and power by the controlling elements in each convention. In many cases the interest had named the candidates in both party conventions, so that in electing either one the people merely exercised their right of franchise to the advantage of the controlling interests. That to nominate was quite as important as to elect gradually dawned upon them; and so, at the first opportunity, the electorate submitted and passed a bill by more than a three to one vote, which would give all an opportunity to have a voice in the selection of candidates.

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* See Note 18.

Through the provisions of the new Direct Primary Law, the status of the political parties of Oregon has been entirely changed. The requirement now is that candidates, instead of appealing to the members of a convention, get their names before the people by the presentation of a petition signed by a certain number of the members of their party. This petition is filed with the County Clerk or the Secretary of State, with the former in the case of county officers, and with the latter in the case of district or state officers. If the petition is regular, the name is placed upon the ballot. Since this procedure was required by the law, the need of a convention or assembly was considerably decreased, and the dependence of the candidate upon the nomination of an assembly entirely removed. As a consequence, the old political leader who was familiar with the methods of the convention only, and who exercised a great deal of influence there, dropped out of Oregon politics and the candidates for office came principally from another class of the electorate. Although there was nothing in the Primary Law which forbade a convention or an assembly, yet the new plan was such a radical departure from the old method, that those who had participated in the old political game seemed to lose interest entirely.

After the Direct Primary Law had been in operation for an election or two, party spirit began to revive and in several county conventions, which laid the basis for a larger movement, the Republicans of the state took heart and called a state convention which was held in the city of Portland in June, 1910. This convention is generally referred to as an assembly by those who were favorable to the convention idea, and as a convention by those who were opposed to it. Before the twelve hundred delegates met, in fact before they had left their different homes and precincts to meet at Portland, the far-sighted candidates for office had made up a slate and the assembly turned out to be little different from the convention of the old days. Many supporters of the Primary Law who had hoped to see this assembly a useful supplement to the new law were disgusted with the cut-and-dried manner in which it was conducted, and upon its adjournment there was great dissension among the Republican delegates. The result of it was the defeat of the Republican candidate for Governor and at least the temporary annihilation of the convention as a political institution of Oregon. What happened to the state convention happened to the county conventions in most of the counties, and it is considerable of a question as to whether or not there will be such a thing as a county convention or a state convention in Oregon for some time to come. The matter is referred to here because it shows most decidedly the attitude of the people of Oregon at the present time toward the old political system of holding conventions.*

As to the advantages of the Direct Primary Law, the first thing which it accomplished was to eliminate from politics the too active political bosses whose source of strength lay in the convention. It gave equal opportunity to all, for any man who wanted to run for office could enter the contest on equal terms with any other man. It annulled that system of elimination by which all the candidates went into a convention and practically pledged themselves to stand by the one who received the largest number of votes. There is no question but that under the Direct Primary Law every man has an opportunity, an advantage which he did not have under the old political system. If the new system has weakened parties, it has increased the power of measures and it has therefore put principles ahead of men.*

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* See Note 19.

The most popular feature of the Primary Law and one which commends it to the great majority of people, is the provision for the popular election of United States Senator. Oregon was the first state in the Union to devise a successful plan by which the choice of the people would be carried out. The story of the accomplishment is interesting and important enough to justify a special chapter.

It is safe to say in regard to the Primary Election Law, that the voters of the state of Oregon would not think of doing away with it although certain defects have appeared and are appearing which must be corrected in order to render it a satisfactory measure. It is reasonable to believe that most of them can be remedied as soon as they are thoroughly understood. We will now note some of the principal defects.

In spite of the fact that the Oregon Primary Law states in its preamble that political parties are essential to the welfare of the nation, the law has practically done away with political party organization in this state. Since the primary election has succeeded the convention, each party of any particular strength holds its election and selects its candidates for different offices. These names go on the ballot in the general election. By this method of nomination any man who has the following of enough electors in his party to sign his petition may become a candidate for office without consulting any one else or without being at all dependent upon party leaders. Considerable disappointment among the partisans of the state has resulted in the selection of candidates not in good standing with the political parties. This has been partly due to the fact that in the primaries, Democrats have registered as Republicans and *vice versa.* The purpose and result of this has been to nominate some of the poorest men in the majority party, in order that the minority party when it came to the general election would have an advantage. The participation of Democrats in Republican primaries is coming to be a more and more serious question, and indicates the most fatal defect in the Oregon Primary Law.

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* See Note 20.

The unusual extent to which this is carried on is a fact which accounts largely for the selection of men unrepresentative of the Republican party in Oregon as candidates for office, and is plainly shown by the following figures taken from the registration books. It should be remembered that the Republican party has a normal majority of about 25,000 in this state. The latest table of registration is as follows:

	1908	1910	1912
Republican	80,921	82,351	93,070
Democrats	28,788	26,298	28,417

It is probable that the increase in population has contributed more to the Republican ranks than to the Democrats, but it is inconceivable that in four years the Republicans have gained in strength 12,149 and the Democrats only 811 votes. Comparison by counties would show similar results and intimate analyses of many localities would show conclusively that the minority party participates in the primary of the majority party often with the sole purpose of aiding in the selection of the weakest men as candidates.

The above figures do not show as striking a comparison as might be expected, on account of the fact that party lines are supposed to be more closely adhered to in the registration in Oregon for the election of 1912 on account of its being the presidential year. For instance, note the figures in the years 1908 and 1910. The Republican registration was increased by 1,430 votes in the state. It was not to be expected that the Democratic increase would be as great as this, but without question there would be some increase normally. But the figures show that there was a positive decrease of 1,490 votes, a greater *decrease* in the number of registered Democrats than the total *increase* in the number of Republicans. The figures for the same period of time in Multnomah County show an increase for the Republicans of 4,528 votes and for the Democrats a decrease of thirty-five votes. Referring to the table again, the Republican plurality in the state ranges from 20,000 to 30,000 votes, never exceeding 30,000, and yet the figures in the table would indicate the majority for the Republican party of over 55,000 votes. This condition is the most serious indictment against the Primary Law and if no remedy is discovered to correct it, the defect will in time undoubtedly mean the overthrow of the Republican party.

There is at present no strong inclination to go back to the convention system in Oregon, but the abuses of the Primary Law must soon work a change of some kind. It is not conceivable that the members of a political party will always tolerate such political dishonesty. But the many and radical changes in Oregon politics during the last few years have rendered it quite difficult to detect many disadvantages that are making their definite appearance now, and consequently it seems that the day for the reform of the new system has not yet arrived.

There is another disadvantage in the law which it is quite proper to point out here. It is that the two elections involve a great expense to the candidate, especially in the case of state or national offices. Some of the best men in the state of Oregon have practically bankrupted themselves in their endeavor to acquire office. It was partly in recognition of this defect of the law that the Corrupt Practice Act was adopted. This, however, does not relieve the candidate for a state office of a great deal of expense involved in promoting a campaign which must reach from one end of the state to the other. However, in the case of small political units, like the county, where candidates are personally known to the voters, the expense of election may be made a great deal less than under the old system.

Another disadvantage of the law which should be mentioned here, and which applies particularly to the thickly settled localities where candidates are not known to the voters, is that the candidates are not sought out by the electors; that is, the office does not seek the man, but the man almost invariably seeks the office. With no provision by which the qualifications of the candidates are to be considered by the political organizations, with no organizations to seek out men for official positions, with the active political leaders of yesterday out of the field entirely, the result is that men generally become candidates upon their own initiative. The fact that petitions are necessary to place the name of the candidate on the ballot amounts to almost nothing as an expression of support, for the names are usually secured by men who are paid to secure them, the usual charge being so much per name.*

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* See Note 21.

Another disadvantage which the people of the state are coming to realize in connection with the Primary Law is that in the distribution of offices, centers of population secure practically all the plums. In Marion, the second largest county in Oregon in point of population, every county and state officer nominated in the recent Republican Primary came from Salem, the county seat. While the suggestion that a convention will eventually change this, would be a most unpopular one just now, yet it seems logical that in time it will be demanded.

CHAPTER VIII

THE POPULAR ELECTION OF UNITED STATES SENATOR

PROBABLY no single issue has been a more direct cause of the reformation of Oregon politics than the election of United States Senator by the Legislature. For many years this election was an issue upon which the legislators were nominated and elected. The fate of most legislation was largely determined by this issue, as it was not only the line upon which well-organized machines divided, but it was the determining issue in the organization of the House and Senate and in the selection of their committees. The record of the Oregon Legislature in senatorial contests was the most discouraging feature of our political system for years. The dead-locks which were often marked by wholesale bribery and fraud, and which often resulted in no legislation at all (though the expense of legislation still continued), — these dead-locks were the real cause of the adoption of the new method. The change was due to Oregon's determination to take the matter out of the hands of the Legislature rather than to an inclination on the part of the people themselves to make their own selection.

The provision of the Direct Primary Law which is responsible for the popular election of United States Senator in Oregon is known as Statement No. 1, being a pledge which the candidate for the Oregon Legislature signs to the effect that he will vote for that candidate for United States Senator who has received the highest number of votes cast by the people at the previous election.* The names of the candidates for United States Senator go upon the ballot in the same way as the names of candidates for the other offices. The method of electing the Senator, then, in Oregon is substantially the same as the method of electing the Congressmen except that in the former case the Legislature ratifies the election in order to render it constitutional, and in the latter case the matter does not of course go to the Legislature. It is not a method which came to the people easily; but it is the result of a continued and persistent effort to secure a plan that would be an effective one. The story of this effort, which is unique in the history of the political development of this country, is well worth giving at length.

For many years the agitation for the popular election of United States Senator had gone hand in hand with that for the Initiative and the Referendum. In fact, the many long drawn out and too often disgusting contests in the halls of legislation over the election of United States Senator contributed materially to the arguments for the Initiative and the Referendum. For many years the people of the state had sent their petitions to Washington asking for an amendment to the National Constitution and as many times were their petitions not granted. Finally Oregon sought to solve the question independent of the national government, and the first attempt was made in 1903.

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* See Note 22.

The previous Legislature had passed a bill permitting the names of the candidates for United States Senator to go before the people for their approval. This was before the day of the Primary. The candidates chosen were Ex-Governor T. T. Geer to represent the Republicans, and C. E. S. Wood, a prominent citizen of Portland, to represent the Democrats. The people gave Ex-Governor Geer a majority vote, and it was expected that in accordance with the spirit of the law the Legislature would ratify this selection and send Mr. Geer to the United States Senate. But the members of the Legislature had not been sworn to support the selection of the people, and as a consequence, when the Legislature met Mr. Geer was defeated. In his stead Mr. Charles W. Fulton was sent to the United States Senate. Mr. Wood, the defeated Democratic nominee, sent an open letter to the members of the Oregon Legislature urging them to support his successful opponent for the position, but it was of no avail.

The failure of this law was the immediate cause for including in the Direct Primary Law which was submitted in the election of 1904 that provision known as Statement No. 1. This was not a compulsory pledge,— the law read that the candidate of the Legislature might take either Statement No. 1 or Statement No. 2. Statement No. 1 is the pledge which has been quoted. Statement No. 2 was no pledge at all, but simply a statement made by the candidate that he would not consider himself bound by the vote of the people, but would exercise his judgment in making his selection for Senator. A number of the leading advocates of the direct election of Senator used their strongest efforts to get the candidates for the Legislature to sign Statement No. 1, and succeeded pretty generally in this effort. In fact, at that time little was needed to persuade the legislator that this was the thing to do.

With a substantial majority of the legislators pledged by Statement No. 1, the first contest under the new Oregon Primary Law was held in 1906. There were five candidates from the Republican party in the primaries for the nomination of United States Senator, of whom Jonathan Bourne received a small plurality. Mr. Bourne, who had affiliated at times with the Democrats, occasionally with the

Populists, and again with the Republicans, and who had participated in former legislative holdups, was not satisfactory to the Republicans of the state but was regarded as a sort of accidental choice. His election, however, was largely due to the fact that he saw early the possibilities of manipulation in the Oregon Primary Law and took advantage of them. For the short term, Frederick Mulkey of Portland was nominated. Both Republican candidates were successful before the people, and when the Legislature met in joint session to elect the United States Senators, *for the first time in the history of the United States,* the selection of the people was ratified, and in a period of less than twenty minutes both Mr. Bourne and Mr. Mulkey were elected to the United States Senate.*

But there were Republicans in the Legislature, some of whom had signed Statement No. 2 and some of whom had not signed any statement, who would not support Mr. Bourne. Hence, the danger of a dead-lock at some subsequent session and of the defeat of the popular choice of United States Senator was so apparent that an initiative measure was passed in the election of 1908 making the signing of Statement No. 1 compulsory. Doubtless this measure was unconstitutional, but it had the effect for which it was intended, that is it showed plainly the attitude of the people of the state on the question.

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* See Note 23.

During the election of 1908, the great issue between the candidates for the Legislature was Statement No. 1. It was quite freely predicted that on account of the unpopular selection of Jonathan Bourne made possible through the statement pledge, the Statement No. 1 men would be defeated and Statement No. 1 as an issue eliminated. But when the returns were all in it was found that Statement No. 1 men had been returned to both the House and the Senate in a slight majority — a majority sufficient, however, if they kept their pledges, to insure the selection of the people's choice for Senator.* In the same election, Ex-Governor George E. Chamberlain, the Democratic nominee, received a majority of votes at the hands of the people. Mr. Chamberlain was elected largely through the assistance of Republican votes.†

The attitude of the average politician in Oregon toward Statement No. 1 has changed, and as an issue it is now rarely urged. This reversion of feeling is due partly to the overwhelming vote of the people on the Compulsory Statement Bill passed in 1910; but no doubt it is also largely due to the fact that most of the men who failed to sign the statement in the contest of 1910 were defeated. This was especially so in Multnomah County, the county in which Portland is located, where a strong anti-Statement ticket composed of well-known citizens was badly defeated by Statement men, many of whom were not at all well known.

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* See Note 24. † See Note 25.

CHAPTER IX

THE RECALL OF PUBLIC OFFICIALS

IN June, 1908, the people of Oregon, by a vote of 58,381 to 31,002 passed a constitutional amendment giving electors power to recall public officials. The use made of this power calls for special consideration.

The power given by the recall amendment has been used several times in Oregon, but its extensive application was checked in December, 1911, by an opinion given by the Attorney-General of the state, to the effect that it would be necessary for the Legislature to pass supplementary legislation to render the recall operative. However, before this opinion was given, Oregon had received several demonstrations of how this new power would be used. A brief reference to these experiences will be of interest, but for the continuation of the story future action of the Oregon Legislature must be awaited. Doubtless that body will furnish the necessary legal machinery to make the action of the recall certain.

The first use of the recall in Oregon was in Junction City, Lane County, in April, 1909, when Mayor C. P. Houston was recalled by those who disapproved of his policy toward the liquor interests. In the recall election, Frank A. Saylor was chosen to succeed him.

The next contest of importance was at Escatada, Clackamas County. This is a small town of about 120 voting population. The recall election involved the Mayor, W. B. Heylman and five members of the city council. The contest was seriously waged and every soul in Escatada lined up definitely on one side or the other. The recall forces were led by J. W. Reed, Ex-Mayor, and the election was the outgrowth of a contest waged between the two town factions for a period of about four years. When the town of Escatada was incorporated, Reed was appointed Mayor. Toward the close of his administration he was indicted and found guilty of participation in a colonization scheme in Sellwood precinct. When he came up for reëlection he was defeated by Dr. W. A. Haviland by a majority of five votes. Haviland later resigned but succeeded in persuading the council to choose one of his supporters, W. A. Heylman, as his successor. By the provisions of the charter of Escatada resignations were to be filled in this way.

One of the last official acts of Reed and his council, had been to authorize the issuance of $10,000 twenty-year, 5 per cent. interest-bearing bonds in payment for a municipal water system. Haviland had opposed the purchase of this system but at a public meeting of the property owners of the town the proposition was voted.

Neither Haviland nor his successor Mayor Heylman would pay the interest on these bonds, the latter maintaining that the principal and interest exceeded the limit of indebtedness allowed Escatada which was $10,000. The payment of $6,800 was for the purchase of the water system and $3,200 worth of bonds was exchanged for cash to be used in extensions and improvements. The Reed faction accused Heylman of inconsistency in repudiating the original indebtedness and at the same time superintending the expenditure of part of the money,— the $3,200 cash, — for improvements.

The Heylman faction of the council ordered an examination of Recorder Johnson's books and accounts. These were declared to be in bad condition, whereupon the council met and declared Johnson's office vacant. At once one of the Heylman councilmen resigned to accept the position which his fellow officers had declared vacant and had offered to him. Johnson, however, refused to give up the books and papers of the office and carried his case to the circuit court.

During the time that Mayor Heylman and his councilmen were having Johnson's records examined, he was busy with the recall petition asking for the resignation of the Mayor and his councilmen. At the very meeting in which Johnson was ousted, he presented the petition signed by fifty-eight legal voters of Escatada asking for the resignation of Heylman and his five councilmen. All the officials refused to resign, whereupon Johnson posted notices calling a special election for the purpose of recalling them. The result was that they were recalled. Nevertheless, they refused to turn the records and reins of government over to their specially elected successors, declaring that the election was carried by fraud.

The matter then went into the courts; and from that date until the regular election, Escatada had two Mayors and two sets of councilmen. In the next regular election, the same sets of candidates went before the legal voters of Escatada and the men elected at the recall election were successful.

The next recall contest was held in Ashland, where in a total of over 600 votes cast R. N. Snell, the Mayor recalled, won over his opponent W. N. Grubb, by a vote of more than two to one. Considerable feeling grew out of the contest. The opposition seemed to be based upon objections to municipal improvements such as the administration had been supervising, but the success of Mayor Snell was a complete though somewhat trying vindication of his administration.

The attempt for recall which has excited the greatest interest in Oregon was the case of Judge John S. Coke of the Second Judicial District. This was the first instance on record in which the effort was made to recall a judge from the bench. The effort failed without even coming to a vote, but the story is interesting and full of information to the student of the Judicial Recall, showing as it does how this important reserve power is sometimes used in the case of judges.

Judge Coke was first appointed to his position, and later elected by the people in rather a hard-fought contest. During the first part of his term of office there were a number of violations of the Local Option Law which were vigorously prosecuted, and upon which Judge Coke imposed some heavy fines and penalties. The feeling aroused by these prosecutions was largely responsible for the effort for recall, but the result of a murder case over which Judge Coke presided was used as a basis for the attack. The jury decided the case as one of self-defense and so acquitted the defendant. Although the verdict was satisfactory to one side, to the other it was not, and the instructions of Judge Coke to the jury were taken as the basis for the recall. That the judge's instructions in this case were used to cover up the real motive for the recall was made quite apparent by the manner in which the whole matter was handled.

The attorney employed to take charge of the recall election reported good progress in Douglas County where there was considerable political opposition to Judge Coke, who resided in Coos County.

After about three months' agitation for the recall, those having the circulation of the petitions in charge admitted failure, the reason assigned being lack of funds to secure signatures.

Although it is quite improbable that in case the petitions had shown sufficient signatures and the election had been held that Judge Coke would have been recalled, at the same time the experience gives a good idea of just how such a movement may work and how much injury and injustice agitation may do.* That the recall as it now stands does not require anything in the way of proof as a basis for its action and that the whole undertaking may be, and usually is, based upon a case of accusation is unquestionably a serious defect. That this will in time be changed is quite reasonable, but until it is done we may expect the recall to be employed not for the purpose for which it was intended, but as a destructive tool which the enemies of public officials may use to vent their spite or to wreak revenge.†

*See Note 26. †See Note 27.

CHAPTER X

THE CORRUPT PRACTICE ACT

THE Corrupt Practice Act, passed by the people in 1908, is among the most important of the several measures which make up the Oregon System. The purposes of this act are well set forth in its title which reads as follows: "A bill for a law to limit the amount of money candidates and other persons may contribute or spend in election campaigns; declaring what shall constitute corrupting use of money and undue influence in elections and punishing the same; prohibiting attempts on election day to persuade any voter to vote for or against any candidate or candidates, or any measure submitted to the people; to protect the purity of the ballot; furnishing information to voters concerning candidates and parties, partly at public expense, and providing for the manner of conducting election contests."

This measure was submitted to the Legislature of 1907 but did not pass. It was then submitted to the people, receiving a majority of over 22,000 votes. Only seventy-five per cent. of the people voted on this bill and forty-eight per cent. carried it, but it has proved probably the most satisfactory measure yet passed by the people.

Although the first provision of the bill which seeks to limit the expenditures of candidates for office is not a success and has not accomplished what was intended, inasmuch as it does not regulate the amount of these expenditures, yet the publicity feature, which requires a sworn statement of expenditures by or for a candidate, marks a decided improvement over the old system.* This part of the bill grew out of the heavy expense to which candidates were subjected in the two elections,— that is, the primary and general elections. The bill sought to limit these expenditures to fifteen per cent. of the salary of the office but in no case to less than one hundred dollars. If this had been the result, it would have given the poor man an equal chance with the rich man in the contest for office, but it limits the expenditures of the honest man only and operates to the advantage of the dishonest one. A provision of the law which enables the candidate to reach the voters at a comparatively small expense, however, is that space is allowed him in the Voters' Pamphlet, in which he may publish his photograph and platform, the charge for this being nominal, since the state bears much of the expense.†

The law at great length defines what shall constitute the corrupt use of money and influence in elections and its provisions are stringent and sweep-

* See Note 28. † See Note 29.

ing. But the feature which affects every legal voter is the regulations for election day.*

Through it the character of election day in Oregon has been completely changed. It has eliminated from participation in all elections the political "heelers" who infested the polls on election day to interrupt the citizen as he made his way to the voting booth. It has rendered unnecessary the automobile, and the carriage which afforded the working man his one free ride of the year for his vote. It has made unlawful the eleventh-hour dodger emanating from cowardly and unknown sources, and has even gone so far as to prohibit campaigning of any kind on election day either for men or for measures. In short, it has so changed the character of election day in Oregon to one of purity and decency that of all the measures passed by the people it is without doubt one of the best.

* See Note 30.

CHAPTER XI

THE PRESIDENTIAL PREFERENCE PRIMARY LAW

THE Presidential Preference Primary Law which was submitted in the election of 1910, carried by a majority of 1,729 votes in a total of 84,977. This small majority while undoubtedly due largely to the great number of measures submitted, shows clearly a great deal of dissatisfaction with the Primary Law and an impatience with so many political changes in Oregon. The title of the bill passed is as follows: "A bill for a law to amend the Direct Primary Law by extending its provisions to presidential nominations, allowing voters to designate their choice for their party candidates for President and Vice-President; for direct nomination of party candidates for presidential electors; for election by party voters of delegates to their party national nominating conventions, each voter voting for one delegate; for payment of delegates' actual traveling expenses, not exceeding two hundred dollars for each delegate, and extending the publicity rights of candidates in the state nominating and general election campaign books."

In the primaries held in Oregon on April 19, 1912, this new extension of the Primary Law was tried and for the first time the voters of Oregon recorded directly their choice for President and Vice-President of the United States. For President the names of LaFollette, Roosevelt, and Taft appeared on the Republican ballot, with Clark and Wilson on the Democratic ballot. These names were all placed on the ballot by petition. The candidates for Vice-President did not appear; as a consequence many names were written in and it took the official count to determine the selection. At the same time delegates to the national conventions were chosen and presidential electors nominated. One of the main purposes in extending the Oregon Primary to include the selection of national officers was to eliminate entirely from the Oregon politics the need of a convention in any form. That provision of the bill by which the elector voted for one delegate is the first application in Oregon of the principal of proportional representation.*

The argument submitted by the People's Power League in the Electors' Pamphlet on this bill is as follows:

"The purpose of the bill extending the Direct Primary Nomination Law to presidential campaigns and nominations is to increase the people's power in four ways:

"1. Giving voters the right to express upon the official ballots in the primaries, their choice for their party candidates for President and Vice-President. (Section 2b)

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* See Notes 31, and 42.

"2. Allowing all members of the political parties that are subject to the Direct Primary Law to elect their party delegates to their national conventions. (Section 2c)

"3. Giving party voters the power to nominate their party candidates for presidential electors. (Section 2c)

"4. Extending the publicity rights of candidates in the party and state campaign books provided for by the Corrupt Practice Law and including the above-named classes of candidates for party nominations. (Section 2c)"

"The people of Oregon have learned, and those in other states are learning, that the power to nominate is more important than the power to elect. When members of a party give the power of nomination to a few delegates in a convention, they open the door for selfish interests, combinations and fraud to control the convention. To delegate the power of nomination is to encourage carelessness among the voters. The system of convention nominations often causes the candidate to feel under greater obligation to the delegates and bosses than he does to the people. The candidate who is responsible to all the voters will give better service to the people than one who is under obligations to a party boss, a political machine or a few delegates.

" Under the convention system, as is well known, a very few men make up the ' slate ' in the primaries, and delegates to state and national conventions are often chosen long before the nominating conventions are held. It is well known, too, that men who oppose a political machine are very seldom selected as delegates to a state or national convention.

" The people of Oregon and of some other states have found that direct nominations of candidates for city, county and state officers are of benefit to the people. The extension of the Direct Primary System to candidates for President and Vice-President would be of much greater advantage to the people because of the great power of these officers.

" In Mexico to-day we see the result of a great federal political machine controlled by the President. Under the convention system of appointing delegates to the national conventions it is possible for the same result to be brought about by the power of our President to control officeholders and build a huge political machine, with which he may dictate the nomination of his successor. This will be impossible if the people elect and instruct their own delegates and pay the necessary traveling expenses. The total expense to the state could not exceed eight thousand dollars at the 1912 election. It should be worth more than that to the earners of three dollars a day or less to make it possible that they should be represented by men of their own class in the national conventions that nominate the party candidates for President and Vice-President. It should be worth more than that to the man whose income is more than three dollars a day to know that the state and his political party are not deprived of the services of any citizen because he cannot afford to pay his traveling expenses to the convention, and also to know that every class of citizens within the party has an equal chance to be fairly represented among the delegates from Oregon who help to nominate the party candidates for President and Vice-President.

"In the interest of American liberty and progress, the taking over by the people of the United States of this direct power to nominate the candidates for President and Vice-President, is of the utmost importance. No other power has so great influence on the daily lives and prosperity of the citizens as the President. He is as much more important than any state officers as the Governor is more important than the County Judge. Oregon has already developed the steps necessary for the application of the principle of direct nominations, and now it remains only to extend and apply these principles to the nomination of President and Vice-President and the election of delegates to the national conventions. When this shall be done by the Nation, then the people of the United States may directly exert and control all the influence and power nationally that the people of Oregon now have in the nomination and election of local candidates for office. The other states will very quickly follow the example of any state that succeeds in the practical application of these principles in its election laws."

CHAPTER XII

THE EFFECT OF DIRECT LEGISLATION UPON REPRESENTATIVE LEGISLATION

IT is difficult to state with precision the effect of the Initiative and the Referendum upon representative legislation. It would seem at first glance that the comparison of the Legislature and its work to-day with that of the days before direct legislation would give us the desired conclusion. Such a comparison would probably furnish us with contrasts both in the personnel of the legislative body and the character of the work done by it, but these contrasts would be in most cases due to other causes than the Initiative and the Referendum. For instance, the direct election of United States Senator by the people has eliminated from the Legislature an issue that used to overshadow every other, and has thus relieved the lawmakers of this duty, giving them an opportunity to give attention to needed legislation. This change in the order of things is traceable directly to that provision of the Primary Law known as Statement No. 1. Although it is but fair to acknowledge the fact that the Direct Primary Law in Oregon was secured through the use of the Initiative, it is not logical in summing up the effects of direct upon indirect legislation to attribute to the Initiative and the Referendum any of the results directly traceable to the Primary Law; for in a number of states where there is no initiative or referendum, primary laws are in force.

But there are certain effects which can be ascribed to the Initiative and the Referendum. Although the Oregon Legislature has shown a decided respect for the opinions of the electorate as registered by the new method the exceptional cases are not numerous nor important enough to mention; and although the electorate, on the other hand, in cases referred to them have usually sustained the Legislature on measures of importance and merit, this mark of coöperation and confidence, a favorable sign in the early days of direct legislation, is gradually giving way to tendencies both deplorable and dangerous. We shall consider only two of these here: first, there is a strong tendency on the part of the Legislature to shift responsibility to the people; and, second, there is an apparently widening gulf between the people and the Legislature for which the Initiative and the Referendum in the hands of men who abuse it, seems to be largely responsible. The last tendency is a dangerous sign in the Oregon political system.

An example of the shifting of responsibility from the shoulders of the Legislature to the people was shown in the session of 1909 in the case of the Normal School issue, already described. The Senate, much to the amazement of the people of the state, wiped all the legislation concerning the three schools off the statute books and left them to go before the people for reinstatement.*

The Normal School System was destroyed as far as it was possible for the Legislature to destroy it. The schools at Weston and Ashland were both defeated, and thus a state greatly in need of a Normal School System was reduced finally to one.† The story is emphasized here because it is one of the examples showing how the members of the Legislature shift upon the people responsibilities very properly belonging to themselves,— responsibilities which, though somewhat difficult to bear at times, it is nevertheless their duty to assume.

The second tendency to which we have referred is the widening gulf between the people and their Legislature, a tendency the seriousness of which cannot be overlooked by the careful observer. That there is not the coöperation between the people and their Legislature which there should be and which through the provisions of the Oregon system there easily could be, is undeniable. Unless the people and their representatives resolve to work together the time is not far off when there will be a new issue in Oregon and that issue will be the abolition of the Legislature. Such a statement may seem absurd, but it is not an unlikely result. Indeed, such a proposal has been seriously made by some of the Oregon press and under the present conditions there would seem to be no difficulty in getting a petition for this purpose. It would undoubtedly receive an astonishing support. It may seem strange that in a state where the people have direct primaries they should make their selections for the Legislature and then feel that these men selected do not represent them; yet this is the case. There are two general causes for this: first, the people do not take enough interest in the primaries, but rely too much on the law and too little upon vigilance; and, second, possible coöperation is overlooked by thousands who say, "Well, we have the Initiative and the Referendum if the Legislature don't give us what we want." Thus is the needed coöperation between the elector and the elected overlooked. To these causes must be added the inefficiency of the Legislature which is as much afflicted by too much legislation as is the Oregon electorate.*

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* See Note 32.

† See Note 33.

But among the strongest contributors to this dangerous tendency is a class of people whose business it is to criticize and discredit the Legislature, and thus make way for so-called reform measures,—measures which are too radical to receive the support of a deliberate body, but which must depend upon a vote of ignorance or prejudice in order to pass.

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* See Note 34.

This class is supplemented by another which is always opposed to organized government and together they some day may bring the people of the state to the sharp realization that there are two distinct lawmaking bodies in Oregon and that one should be abolished,— in which case the majority of voters will determine the contest.

That most of those who were responsible for the enactment of the Initiative and the Referendum constitutional amendment in 1902, expected them to be used as reserve powers and not for the purpose of establishing a new independent legislative body cannot be doubted. That the people will in time take steps to curb the extensive use of the Initiative and the Referendum and also to increase the efficiency of the Oregon Legislature, is a reasonable hope. When these things are accomplished, the effect of direct legislation upon representative legislation will be what the people intended it to be, and the Oregon Legislature will be more representative than it ever has been before.

CHAPTER XIII

GOOD RESULTS OF THE DIRECT LEGISLATIVE SYSTEM IN OREGON

THE benefits that have come from the exercise of direct legislation by the people of Oregon may be classed as direct and indirect. By direct benefit is meant the effect of the system upon the individual citizen; by indirect is meant the good legislation secured by the system.

Among the direct benefits of the Initiative and the Referendum, it may be fairly stated that there are four important ones, as follows:

1. The interest of the average elector in legislation has been increased.
2. Societies and organizations heretofore non-political have given careful attention to initiative and referendum propositions.
3. The press has taken an interest in direct legislation, and has thus given wide publicity to measures affecting the general welfare of the public.
4. There is an increased sense of responsibility on the part of many citizens for the results of direct legislation.

Although it has been observed that in Switzerland one of the greatest objections to the direct system of legislation is the lack of interest on the part of the individual citizens, that criticism cannot fairly be made on the system in Oregon. There is nothing in Oregon which compels citizens to vote on legislation, and yet the percentage who do vote on the measure submitted has disproved the theory that the average man will not take an interest or a part in deciding these measures. In the election of 1904 the vote on measures was 78 per cent. of the whole vote cast; in 1906 it was 76 per cent.; in 1908, 77 per cent.; and in 1910, 72 per cent. The decrease in percentage of interest will be used by many as an argument against the system. It should be remembered that the number of measures submitted has been increased from two in 1904 to eleven in 1906; to nineteen in 1908, and to thirty-two in 1910. This increase is without doubt an argument against the system, especially as it exists in Oregon now; but it is one of those evils which may be prevented if the people of the state choose to do so. For instance, it would seem reasonable that a smaller number of important measures submitted would increase the percentage of interest and the vote cast. Whatever one may think of this conclusion, the unmistakable observation stands that the people of Oregon are interested in direct legislation and it may be added here that the interest seems to be in proportion to the simplicity of the questions submitted.

The Granges and labor organizations have always been interested in political matters, but never so much so as under the present system. The commercial clubs, the church brotherhoods and other religious organizations, schools, and social clubs have taken an unprecedented interest in direct legislative methods and issues submitted to the people in this way. It is not uncommon — in fact it is quite common,— to have the Sunday sermon a political one, and preachers, because of their strategic position as public speakers and as pastors of various-sized flocks, have come to be secondary powers in politics in Oregon. Few ministers there are now who are not interested in politics, either state or local.

The application of the Initiative and the Referendum to local as well as state matters has resulted in an interest on the part of practically all the organizations in either or both issues. In some cities the politicians always want to know how the Christian Brotherhood lines up on the question, or how the Catholics are going to vote. It is seldom that an organization votes unanimously but as a rule in local matters the strong majority goes one way, and in churches and other organizations the questions are usually thoroughly discussed before the date of election. To many who are not accustomed to the participation of religious and social organizations in politics, the argument contained in this observation may have a doubtful weight; but whatever other criticisms may be offered, that of apathy on the part of the organizations cannot be included.

The greatest power in determining direct legislation is undoubtedly the public press. The papers of Oregon have done all that could reasonably be asked of them to enlighten the public on the pending issues. To the *Oregonian*, to the *Oregon Journal*, and the *Telegram*, which are the leading daily newspapers of the state, much credit is due for the intelligent disposal of the sixty-four measures upon which the people have passed judgment. These and many other daily and weekly publications of the state have taken a patriotic interest in direct legislation that has made it possible for more citizens to vote intelligently. The publicity given legislation in this way must be considered as one of the important direct results of the system. The state issues a Voters' Pamphlet, but it is not equal in value to the public press, since all matters contained in it are limited, are often prejudiced, and sometimes even paid for as advertising matter.

As to the responsibility of citizens for the result of direct legislation, this is a contention upon which there will be wide differences of opinion, especially as to the degree of responsibility which the citizens feel; but that there is a decided increase in this sense since the adoption of the Initiative and the Referendum, there can be no question. That a much greater sense of responsibility is needed there is no room to dispute, but the point is — and it is the only point contended for here,— that thousands of men who never participated in politics under the old régime have become interested and feel a responsibility that is new and strong.*

The indirect gain to the people of Oregon, that is, the good legislation secured by the Initiative or the Referendum, is largely a matter of opinion, but the following measures which have been discussed in previous chapters may fairly be included in the list of gains to the electorate:

1. In the election of 1904, the Primary Law with the provision for the direct election of United States Senator.
2. In the election of 1906, the amendment requiring the Referendum on any act calling a constitutional convention.
3. The amendment giving cities sole power to amend their charters.
4. The Legislature authorized to fix the pay of the State Printer.
5. The Initiative and the Referendum to apply to all local, special, and municipal laws.
6. Bills prohibiting free passes on railroads.
7. Gross-earnings tax on sleeping-car, refrigerator-car, and oil-car companies.
8. Gross-earnings tax on express, telephone, and telegraph companies.

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* See Note 35.

9. In the election of 1908, the recall power on public officials.

10. The bill instructing legislators to vote for the people's choice for United States Senator.

11. The Corrupt Practice Act governing elections.

12. In the election of 1910, the amendment permitting counties to vote bonds for permanent road improvement.

13. The bill permitting voters in Direct Primary to express choice for President and Vice-President, to select delegates to the National Convention, and to nominate candidates for Presidential Electors.

Any one at all familiar with the political situation in Oregon will recognize by glancing through the above list of measures an ever-increasing number of laws and constitutional amendments designed to increase the power of the electorate and decrease the power of political managers and political parties. It is without question true that the Initiative and the Referendum amendment adopted in 1902 was voted overwhelmingly, not because of the end in itself, but because it was considered a means to an end for securing certain changes and reforms which the people of Oregon have been unable to secure through the legislative assembly, or through the somewhat slow process of changing the Oregon Constitution.

The first measure therefore to be placed upon the ballot and carried by an overwhelming majority was the Direct Primary Law with the provision securing the direct selection of the United States Senator. Shortly after the Initiative and the Referendum amendment had been voted, and after the Direct Primary Law had been passed, the electors of the state began to divide into two groups: one favoring what might be termed the progressive method instituted in Oregon bringing about a reform and a revolution in political circles; the other opposing the radical changes and taking a more conservative position in the hope of stemming the oncoming current. The old Oregon Constitution had become antiquated in a number of its provisions and there was a general demand in many sections of the state for a constitutional convention. On account of the uncertain political situation, the friends and advocates of the new Oregon reforms felt that a political convention at this time would probably fall into the hands and control of men who were unfavorable to the new régime. And as a consequence, in the year 1906, the amendment requiring a referendum on any act calling for a constitutional convention passed by a vote of 47,661 to 18,751. In the same election a constitutional amendment was passed giving cities the sole power to amend their charters, and extending the provision of the Initiative and the Referendum to all local, special, and municipal laws.

In the year 1908 the bill was passed by a vote of more than three to one instructing members of the Legislature to vote for the people's choice for United States Senator, and on the same day the recall power on public officials was enacted as a constitutional amendment. These together with the Corrupt Practice Act governing elections made the year 1908 one of distinct reform, and with measures mentioned above gave the voters of the state political powers and privileges which ten years ago they had not dreamed of.

In the election of 1910 the Direct Presidential Primary which enabled the voter to express his personal choice for President and Vice-President concluded this astonishing forward march of democracy. Whatever opinion we may hold as to the results of direct legislation up to date, we must admit that the people of Oregon have taken over to themselves completely the power to run the government. There will no longer be anything to prevent the people from ruling, unless it be a lack of inclination on their own part.

CHAPTER XIV

EVILS AND DANGERS GROWING OUT OF THE OREGON SYSTEM OF DIRECT LEGISLATION

IN the state of Oregon where the percentage of illiteracy is much smaller than that of most states in the Union, and where the foreign population is so small, even most of that being an honest, industrious and intelligent element, it may be safely assumed that when a question is fairly and squarely presented to the electors for their decision, it will be settled right. Without this assumption there is no argument for the Initiative and the Referendum. Assuming it, however, is not admitting that every question that has been presented to the people of Oregon has been fairly presented, nor decided right. The truth is that measures have been intentionally misrepresented in order that the people might be fooled into passing them,— measures which, if honestly presented, would never have been endorsed. Our experiment has been long and varied enough to have shown quite plainly certain evils and dangers in connection with direct legislation that should challenge our attention and enlist our efforts to correct them in the interest of direct legislation and good government.

The principal disadvantages or evils which have appeared in connection with our experiment of direct legislation, may be grouped under four heads.

1. The cost of direct legislation has been high in proportion to the results achieved.

2. The Oregon Constitution has been seriously weakened, its safeguards entirely destroyed, and its very existence threatened by a minority of the voters of the state.

3. The people have passed laws against their interests and their convictions. They have been fooled by men who claimed to trust the people, but who, afraid to submit measures honestly, so disguised them that they succeeded in passing.

4. The machinery of direct legislation has fallen into the hands of dishonest men who for money and spite have abused the privilege of direct legislation and who in the name of the people have misrepresented our citizenship and brought disgrace upon our state.

These are broad statements and serious indictments; some of them so serious that the assertions must be backed up with strong evidence.

THE HIGH COST OF LEGISLATION.

On the first point, that of expense, it can be said that it is not to be regarded with the same degree of seriousness as the other three; but it is mentioned here because it is one of the questions that is often asked by those who are inquiring about direct legislation in Oregon. The exact cost to the taxpayers of Oregon for measures secured through the Initiative and the Referendum can be only approximated for the reason that there are several elements of ndirect expense that cannot be figured at all and ome elements that can be only guessed at. For he purpose of our discussion enough data is available to give the student an idea of cost and to guide he citizen in arriving at the approximate results.

The two principal sources of expense to the taxpayers are the cost of the Voters' Pamphlet, and he expense of the election. Inasmuch as measures re voted upon at the general election, the cost on lection day cannot be considered a part of the direct egislation expense. But the extra time required to ount the ballots, on account of the measures, must e charged to the measure expense. The principal angible items of expense then will be the cost of oters' Pamphlets and their distribution, and the ost of counting the vote on the measures.

The official figures of the Secretary of State for he election of 1910 aggregate $26,160.27 for he cost and distribution of Voters' Pamphlets. hese items are segregated as follows: Printing 7,086.26, paper $5,058.60, binding $3,965.68, ostage $6,857.41, clerk hire $1,614.38, envelopes

$1,524.19, cartage $81.05, telegrams $16.74, rubber stamps $5.00.

The cost of counting the vote on the measures as estimated by the *Oregonian* just previous to the 1910 election was $20,000. The time estimated for the county was greatly exceeded in many precincts so that the figures are low rather than high. But with available figures as a basis, the lowest possible expense would be $26,160.27 which together with the $20,000 estimated as the cost of counting the ballots occasioned by these thirty-two measures, makes a total of $46,160.27 as the cost to the taxpayers of election.

As in that election thirty-two measures were passed upon and only seven of these carried, the average cost of each would be $6,655. Whether or not the measures were worth the price is altogether a matter of opinion. The measures are given here in order that the reader may come to his own conclusion.

1. Act establishing branch asylum in Eastern Oregon.
2. Bill establishing State Normal School at Monmouth.
3. County taxation or single tax amendment.
4. Home rule amendment nullifying the Local Option Bill.
5. Amendment permitting counties to vote permanent road bonds.

6. Presidential Preference Primary Law.

7. Amendment reorganizing the judicial system and providing for three-fourths verdict in civil cases.

None of these measures received a majority of the votes cast in the election, the highest being 45 per cent. and the lowest being 37 per cent., and the average only 42 per cent.

The cost of measures of course will vary at each election, the figures bearing rather a definite relation to the number submitted, and will increase in a given number of precincts in proportion to the number of ballots cast.

RESULTS TO THE CONSTITUTION.

We now proceed to the more serious results of direct legislation as practiced in Oregon. The first point is that the Oregon Constitution has been weakened, its safeguards entirely destroyed and its very existence threatened by a minority of the voters of the state.

When the constitution of the state of Oregon was adopted, the article regulating amendment required that any proposed change should pass two consecutive sessions of the Legislature and then be submitted to the people for their ratification. These safeguards were quite in contrast to the present provisions by which, if a man takes it into his head to amend the Oregon Constitution, he may have the proposition placed upon the ballot without examination or review, the only requirement being that he present to the Secretary of State a petition containing eight per cent. of the voters of the state. We pass constitutional amendments now as readily as we pass statutory laws. They are acted upon in the same way, the machinery employed is exactly the same, and the only requirement outside of what has been mentioned is that the petition for the proposed amendment shall be presented one hundred and twenty days before the date of election. When the amendment is placed upon the ballot, if only three people in the state of Oregon should vote upon it, two of them, by voting in the affirmative, would change our constitution. Moreover, there is nothing to compel publicity about proposed amendments at all; that is, there is no law requiring that the measure be explained. If the man who circulates the petition or hires it circulated has the money, he can get space in what is known as the Electors' Pamphlet. If a citizen sees that the amendment is a pernicious one and feels it his duty to point out its pernicious character, he will be allowed to do so provided he will pay the Secretary of State $100.00 a page for the privilege of seeing his argument in print. Neither his argument nor any one's else will be reviewed — no one is compelled to adhere to the truth at all, for the charge that the state makes is for the space, and it does not make any difference to the state whether the truth is told or whether it is not. All it insists upon is the payment of the specified fee.

Naturally such a system is conducive to a large amount of legislative business. This result is shown by the fact that whereas during the half century just preceding the adoption of the Initiative and the Referendum only two or three amendments to the constitution were made by the people, under the present system there have been twenty-three constitutional amendments submitted to the people, thirteen of which have been passed.

Not only are practically all safeguards removed by our new method of amending the constitution, but as has been shown, most of our recent amendments have been passed by considerably less than a majority of the votes cast. A further discouraging result of our new plan is that some of the more recent constitutional acquisitions have been so complex and so confusing in terms that no one knew just what was meant; the Supreme Court will after all be the law-making body in such cases.

UNWISE LEGISLATION.

As to our third observation, namely: that the people have passed laws against their interests and their convictions; they have been fooled by men who claim to trust the people but who are afraid to submit honestly measures which they disguise and then succeed in passing,— a good illustration of this point may be found in what is commonly referred to as single tax legislation.

In the election of 1908, an amendment of Section 1, Article IX of our constitution was submitted by what was known as the Oregon Tax Reform Association. That is, the Oregon Tax Reform Association bought four and one-half pages in the Voters' Pamphlet and filled the pages with argument favoring the amendment. The first sentence of that argument read as follows: "The proposed amendment is a step in the direction of the single tax." The amendment was lost by a majority of something over 28,000,—the official count gives 32,066 for and 60,871 against it. With the majority of 28,000 votes against the measure, it must be clear to the reader that single tax was not in favor with the electors of this state. But in the next election the single tax amendment carried, and it carried because the purpose of the amendment was ingeniously concealed. Those who prepared the argument for the amendment profited by their exhibition of honesty in the previous election to such an extent that they forebore honesty this time, and so the people were fooled by those who were paid by the Fels Fund to fool them.* So the millionaire soap manufacturer through his generosity, aided by the cupidity of the voters, amended the constitution in a way which, according to their own admission, is eminently satisfactory to themselves.* It may not be out of place to say here that the amendment was carried by a minority of the voters of the election. This constitutional amendment like others which have been passed received less than a majority of votes. To be specific, but thirty-eight per cent. of the whole vote cast. Here is a case where, when the purpose of the measure was fairly and squarely presented to the people, they defeated it by a vote of nearly two to one; then, in the very next election, they turned around and gave it a majority of over 2,000. It might be well to stop here long enough to explain how this happened, or at least to read the proposed amendment:

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* See Note 36.

"No poll or head tax shall be levied or collected in Oregon; no bill regulating taxation or exemption throughout the state shall become a law until approved by the people of the state at a regular general election; none of the restrictions of the constitution shall apply to measures approved by the people declaring what shall be subject to taxation or exemption, or how it shall be taxed or exempted, whether proposed by the Legislative Assembly or by the Initiative petition; but the people of the several counties are hereby empowered and authorized to regulate taxation and exemptions within their several counties, subject to any general law which may be hereafter enacted."

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* See Note 37.

It is fair to assume that the thing which caught the affirmative vote on this amendment was the sentence "No poll or head tax will be levied or collected in Oregon." Here was a chance for every man of the state to save a dollar and fifty cents! He promptly took advantage of this opportunity and at the same time obliged the Fels Fund by marking an "X" opposite the proposed amendment. But the joke, if such a serious thing can be called a joke, is that the Legislature seven or eight years ago had repealed the head or poll tax in the state of Oregon, so that this portion of the amendment would have had no effect anyway. However, this carefully selected phrase served the purpose of increasing the vote for the Fels measure 30,000 and it is fair here to admit that the adherents of the cause have earned a part of their reward if results are to be the measurement. The voters of the state have been informed through recent batches of literature sent out by the Fels Fund, that Oregon has taken the most forward step of any state in the Union in the direction of single tax, and a general appeal is made to all the voters to contribute something to the fund. All amounts will be duplicated by Mr. Fels in the effort to fasten single tax upon the people of Oregon.

Not only are the purposes of proposed measures covered up, but several amendments to the constitution which have been submitted to the people have contained from two to a dozen different propositions, usually enough to confuse and discourage the average voter; his inclination is to vote "yes" or "no" on one or two of the propositions, and leave the others entirely alone, either because he does not understand them or does not approve of them. The complexity of the subject-matter and of the titles is mentioned here because we shall have occasion to refer to this feature of the system when we discuss proposed corrections and remedies. It will be obvious to any one who reads the titles of the bills and amendments which have appeared on the Oregon ballots that a voter by endorsing a single clause which he is able to grasp and understand, at the same time gives his approval to half a dozen others which he does not understand at all, and which he may not even approve.

The importance of the ballot title will be at once appreciated by the reader when it is known that there is no provision of the Initiative and Referendum Law that compels publicity for measures initiated or referred. Of course a referred measure is one which has been passed upon by the Legislature, but a measure initiated may never have been discussed in the public press nor explained in the Voters' Pamphlet. Therefore the voter must be guided entirely by the title which confronts him when he goes into his booth to vote.

The law limits the number of words that may be used in a ballot title to 100. But it does nothing toward limiting the number of subjects that one measure may contain, and as a consequence one hundred words is often insufficient to express the purpose of the bill or the amendment. The *Oregonian* on Oct. 26, 1910, editorially made an observation so applicable to this important case that it is quoted here, with some of the writer's comments. The editorial in part reads:

> The *Oregonian* has no quarrel with the Attorney-General over his wording of the ballot title. He did nobly in ninety-nine words, when the multitudinous ramifications of this extraordinary measure are considered. He indicated the following provisions:
>
> "1. Increasing initiative, referendum and recall powers of the people.
>
> "2. Restricting use of emergency clause and veto power on state and municipal legislation.
>
> "3. Requiring proportional election of members of Legislative Assembly from state at large, annual sessions and increasing members' salaries and terms of office.
>
> "4. Providing for election of Speaker of House and President of Senate outside of members.
>
> "5. Restricting corporate franchises to twenty years.
>
> "6. Changing form of oath of office to provide against so-called legislative log-rolling."
>
> The foregoing, with the necessary introduction, comprise the ninety-nine words used in the ballot title. Here are thirteen important provisions of the amendment not enumerated in the official title:

"1. Changing method of filling vacancies in Legislature.

"2. Changing qualifications of Senators and Representatives.

"3. Requiring each house to choose own standing committees.

"4. Removing restriction on appropriations approved by people for local highway construction.

"5. Denying Legislative Assembly power to enlarge or grant right of eminent domain to private corporations.

"6. Permitting majority of Legislature to call special session.

"7. Restricting length of adjournment of either house of Legislature without consent of other house to two days (now three days).

"8. Providing for elections only in counties interested on boundary changes or other local matters.

"9. Providing for written notices to interested persons of legislative committee meetings.

"10. Reducing mileage fees of members of Legislature to actual railroad fares.

"11. Prolonging life of bills from one legislative session to next session.

"12. Prohibiting action by Legislature in same session on bills introduced on and after 21st day.

"13. Prohibiting amendment or repeal by Legislature of any measure approved by people except by three-fourths vote of all members. Applies also to city councils."

In presenting this measure the authors seek to eliminate from the present constitution all of Article IV and replace it with an article twice as long. To make it effective, seventeen self-executing sections are to be forced into the fundamental law of the state. In these self-executing sections and in other portions of the measure it is proposed not only to replace Article IV, but to enlarge and amend Section 18, Article II, amend Sections 15 and 16 of Article V, and also amend the General Election Law and the general statute carrying into effect the Initiative and Referendum powers heretofore reserved in the constitution by the people.

It was wholly unnecessary for the supporters of the visionary proportional representation plan to incorporate it in a constitutional amendment. In 1908 the voters of the state approved an amendment permitting enactment of the plan by general statute. This amendment is now a part of the constitution. When the wide scope of the new amendment is contemplated, but one conclusion may be reached. Measures that certain localities desire were incorporated; other measures that might appeal to class prejudice were included and some measures that might gain general approval were added and all with specific design. They sought to hide the taste of the quinine with a liberal allowance of sugar, and now they say to the voters: "Take the whole dose or none of it — swallow the bitter with the sweet."

This gross abuse of the Initiative and heavy imposition upon the voters is simply a new application of legislative log-rolling.

DISHONESTY IN LEGISLATION.

We now come to the fourth and last point in our discussion, namely: The machinery of direct legislation has fallen into the hands of dishonest men who for money and spite have abused the privileges of direct legislation, and who "in the name of the people" have misrepresented our citizenship and brought disgrace upon our state. There is no better argument for the proof of this last point than the history of the experience of the University of Oregon with referendums, particularly the one on the bills passed by the legislative session of 1911. It may be mentioned here that since the passage of the Initiative and the Referendum amendment, every appropriation which has been granted to the University of Oregon has been referred to the people. These bills have not been referred on their merits. Motives to the discredit of those who have manipulated the movements have been responsible for serious injuries to the state institution. Space will not permit a detailed account of the history of the Referendum in connection with the University of Oregon, but it should be said here, that whenever the people have had the opportunity, they have upheld their school, and the only damage done, which has been considerable at times, has been the delay for a period of two years in the use of appropriations granted by the Legislature. However, it will be worth our while to review the story of the Referendum against the University of Oregon, which has culminated in the special case recently decided.*

In the latter part of the year 1910, a man went to Eugene (the home of the State University), for the purpose of organizing a Carpenters' Union. He found the carpenters of the town fairly well satisfied with conditions there. After he had failed in his endeavor to organize, he left the town with the remark that Eugene would pay dearly for her refusal to organize, and illogically enough, even included the University in his threats. In a few days he returned, promising allegiance to the institution, offering his services to it as far as they would be of any use in the coming Legislature. When the Legislature of 1911 opened, this man was on hand as a lobbyist. After he had failed to line up the Lane County delegation on a measure in which he was personally interested (Eugene is situated in Lane County), he came out in the newspapers accusing the representatives of Lane County of log-rolling and promised that he would see that they were punished. His name is Parkison.

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* See Note 38.

One of the thirty-two measures on the ballot of 1910 provided for the formation of a new county to be known as Nesmith County in which Cottage Grove, a town at present situated in Lane County and about 20 miles south of Eugene, was to become the county seat. The measure failed of adoption, — in fact, it was overwhelmingly defeated. When the session of 1911 opened, the committee in charge of the affairs of Cottage Grove had a man from the southern part of the state present a general county neasure to the Legislature which, if passed, would iave made the formation of Nesmith County a certainty. The members of the House and Senate from Lane County, feeling that they represented the citizens of Cottage Grove as much as the citizens of Eugene in this connection, made an agreement with he committee representing Cottage Grove in the obby, that they would keep their hands entirely off ounty legislation and would abide by whatever deision the other members of the Assembly made. This was satisfactory to the committee, but upon he day when the vote on the county measure was o be taken, the Lane County delegation reeived in the period of a very few minutes some en telegrams from Cottage Grove advising them o stand by the bill which they had formerly romised to leave entirely alone, and one of iese telegrams frankly threatened vengeance if iey did not do so. At the same time the repreentatives of Cottage Grove in the lobby were inructed to tell the delegation that if they did not ork and vote for this measure, the appropriation lls for the University of Oregon, which had aleady passed the House and Senate, would be reerred to the people. The delegation stood by its riginal agreement and the general county measure as defeated.

The people of Cottage Grove who had made their reats kept their word, and as soon as the legislative session closed, they took up the Referendum fight. In spite of the strong feeling between Cottage Grove and Eugene, it was found necessary to go to other parts of the state to secure signatures against the University bills. When the Cottage Grove committee looked around for some one to take charge of this work which the citizens of the town were not willing themselves to undertake, they were not long in finding a man who was willing to take it up, the one referred to, and the Cottage Grove committee gave him a preliminary order for 3,000 names, the agreement being that he should be paid 3½ cents per name or 7 cents for the same name on the two petitions. It should be remembered that the University appropriation included two bills, and these two bills were circulated together. Practically every name that appeared on one appeared on the other petition. The story of petition-making in this case is in no wise an original one, but the details upon which it is founded are quite complete as the result of an investigation by the friends of the University who brought suit to set aside the petition on grounds of fraud. The case explains perfectly how the machinery of direct legislation can be employed by the most irresponsible and unprincipled men.

Investigators were unable to find one single instance in which a signature was secured for the University petitions that was not paid for. Circulators stated that they were not interested in the appropriation at all, but that they did the work for so much per name. Some circulators hoped that the University would get its money.

Of the 13,000 or more names which appeared on the University petitions, the man named personally vouched for about 11,000. Just how far the fraud extended in the case of the petitions will never be known, because the limitation of time and money made it impossible to probe the thing to the bottom. It is interesting to note here that although the attorneys who were defending this man and his petition started out with a determination to leave the burden of proof entirely with the University counsel, the evidence of fraud became so apparent, and the case became so aggravated that they were obliged to undertake to prove the genuineness of the petitions, or rather the genuineness of a certain lot of the signatures to the petitions. The law required 6,135 signatures to refer the bill. The method which the counsel for the defense used was to have the petitions that were circulated in Multnomah County, the center of population of Oregon (and the great majority of the petitions were circulated there), compared with the registration list of voters. The deputies were instructed to throw out petitions on which practically all the signatures seemed to be spurious. This is as far as the state ever went in its endeavor to make a case, but it was amazing to the public to find that the whole number of good names by this somewhat questionable test amounted to less than 3,000 in a total of over 13,000 presented to the Secretary of State. The experts, although employed by the defense, voluntarily threw out more names than they were able to prove as genuine.

The work and character of the circulators employed and vouched for by the leader in the work are quite familiar to the people of Oregon. In Wasco County, 200 or more names were secured on the University petition. When a well-known citizen and ex-treasurer of that county, a man as well known as any one in the county, was asked if he would swear to the genuineness of the names that appeared on the petition, he stated that there might be as many as ten names out of the 200 which were genuine but that he was not willing to swear to more than three, and that these three men had been dead for several years.

Another circulator who was paid to secure names in Astoria, returned to Portland and presented petitions containing 400 signatures, secured mainly by treating to drinks. Returning to Portland he presented the petitions to Mr. Parkison and when Mr. Parkison, as a notary public, went to swear him, the circulator told his story to that gentleman and refused to be sworn. Mr. Parkison, however, swore the circulator after he had left the office, and later presented the 400 names from Astoria with others to the Secretary of State for filing.

There are other instances as interesting as these, but space will not permit us to dwell upon many details of the case. Respectable men and citizens of the state testified on the stand that they had signed the University of Oregon petitions because these had been represented to them as favoring a municipal paving-plan for the city of Portland. Others stated that they had signed it because the circulators had represented it to be for the purpose of giving the University its money and not holding the money up. There were instances in which men authorized circulators to sign for others. The full extent of the fraud in the University Referendum case will never be known, but the nature of it has come to be a matter of public knowledge in Oregon.*

Other petitions for both local and state measures have been initiated or referred on petitions unquestionably fraudulent, but strange as it may seem in a state where radical reforms have been brought about in order to purify and improve government, these questionable methods are practiced with slight opposition when the perpetrators do it in the name of the people.

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* See Notes 39, and 41.

CHAPTER XV

REMEDIES SUGGESTED AS SAFEGUARDS TO THE SYSTEM OF DIRECT LEGISLATION

THERE have been a number of remedies suggested as safeguards for the Initiative and the Referendum in Oregon. One of the most frequently proposed is that more names be required on a petition. For an initiative measure, the requirement now is eight per cent., for a referendum, five per cent. An increase in the percentage of names required, it is argued, would make the Initiative and the Referendum more difficult to invoke and would result in fewer measures on the ballot. This is probably true, yet the reform does not strike at the root of the matter. It is not that we would make direct legislation more difficult but we would make it more safe. To require more names under the present system would mean only that it would require more money to pay the circulators, for most petitions for direct legislation now are paid for on the basis of so much per name. This plan then does not meet the difficulty.

Looking up the problem more closely we find that the greatest evil under the present system is the paid circulator, an evil which should be eliminated by making it a crime for any man to give or receive money for signatures on Initiative or Referendum petition. We must extend the provision of the Corrupt Practice Act to this part of direct legislation. The five per cent. or the eight per cent., to be sure, gives the power of placing a bill or constitutional amendment on the ballot for decision to a small enough proportion of the voters; how important it is, then, to be certain that the names be only those of citizens really interested in the welfare of the state rather than a collection of questionable names secured by a professional circulator who is paid so much per hundred for signatures. Interested and conscientious citizens do not need the " assistance " of the professional circulator; it is rather among the uninterested and unscrupulous that he plies his trade profitably.*

Having eliminated the professional circulator the important question arises: How are signatures to be secured? It will be conceded that with only five or eight per cent. of the voters required to place a measure on a ballot, the signatures should not only be genuine but they should be those of interested voters. To sign a petition merely to relieve one's self of an insisting circulator, is surely not in keeping with the spirit of direct legislation nor is it reason enough to sign a petition merely to give the people a chance to vote upon the matter. If a man does not care enough about the result of an election voluntarily to sign a petition, he ought not to place his name upon the petition at all. We hope therefore to adopt a plan which would not only accommodate the voter but at the same time would assure as far as possible the signing of petitions by interested men.

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* See Note 40.

The state of Oregon already has machinery which could be well employed for the double purpose of making and protecting the petitions that are used as a basis for direct legislation. The registration machinery, consisting of the County Clerk and the Justices of the Peace throughout the counties, makes it possible for any and every qualified voter to register for the election. If petitions were placed in the County Court House and with the Justices of the Peace, every man who wished could sign them. The individual voter would not be put to the embarrassment that he experiences now when he is forced either to sign something that he does not understand or is not interested in, or to turn down the man with the petitions. The circulator of petitions now usually travels through the country and when he is gone the petitions have gone with him and no man knows where to find them when he wants them. By this suggested arrangement a man could always find the petition when he wanted it.

Some would not permit any person to circulate a petition, but there should be and could be a provision by which any man who is genuinely interested, could circulate a petition in keeping with the spirit of the Initiative and the Referendum amendment. To require the voluntary circulator to apply to the County Clerk or some other officer for petitions and sign an affidavit stating his interest in the matter and that he was not paid for his work, would probably be all that would be necessary to guard against the danger of violation of this law.

There are two classes of citizens who would not approve of the plan which has been outlined: one is the man who is employed and paid for managing campaigns, and who can make from $5.00 to $20.00 per day securing signatures to the petitions; the other is a class who does not care how many or what kind of measures go to the people for a decision — to him the more the merrier — and to his class belong the men whose measures would not receive the support of even five per cent. of the voters or eight per cent. of the voters unless they could be purchased in the open at so much per name. What is said here is for neither of these classes but for that larger class of citizens who wish to safeguard the Initiative and the Referendum from the abuse of the cranks and crooks.

With the paid circulator eliminated and ample provision made for securing signatures to petitions, insuring as far as possible that the signatures be those of interested voters, we should go one step further and change the laws so that none but registered voters should be permitted to sign Initiative or Referendum petitions. And further, all petitions should be checked up by the different County Clerks before being presented to the Secretary of State for filing. With this provision, the petition either would or would not be fit to be presented for filing. Moreover, since the uncertainty of the genuineness of the signatures would be settled, expensive litigation on that point would be avoided.

By these provisions, then, we would be throwing about the petitions which are taken as a basis for direct legislation a safeguard that would go very far toward freeing the Initiative and the Referendum from the abuses now too commonly indulged in.

We may now take up some of the remedies for further defects that have grown out of our direct legislative system. Briefly stated these defects are: First, that there are entirely too many measures submitted to the people for decision, resulting in confused ballots and expensive elections: for it costs the people as much to defeat a measure as it does to adopt it.

Second, a number of subjects are often included in one measure, making an intelligible title impossible. There is no chance to amend, the alternative being to vote " yes " or " no "; and often important provisions not understood will be decided by some unimportant provision which the uninformed voter readily recognizes.

Third, untrue statements are not challenged or corrected in the Voters' Pamphlet, and constitutional amendments are passed with the same ease as statutory bills, thus weakening the constitution and reducing it to the position of a collection of statutes. These are the fundamental defects which should be corrected. The plan outlined for perfecting petitions would unquestionably reduce the number of measures submitted, thus meeting the expense item; but what is much more important, it would insure the submitting of only those measures for which there was a genuine demand. It would lessen considerably the power of money and would go a long way toward eliminating dishonest and mercenary political manipulators. The purpose and spirit of the Initiative and the Referendum provisions of our constitution would be obeyed as they have not been since our first election of 1904 when two measures, for which there was strong demand, were submitted and both carried. It could hardly be said that no measures should go on the ballot unless there was a good chance that they would carry; on the other hand, it is sometimes desirable to submit measures to get the public sentiment. But no thoughtful man will contend that it is either necessary or desirable to submit thirty-two measures to the people for decision in one election.

In the 1910 election, seven measures were carried and twenty-three were lost. Aside from the confusion, resulting in general dissatisfaction to the electors, the twenty-three defeated measures cost at a low estimate $1,500 each to defeat. That it was better to defeat most of them I do not doubt,— I am sure that the people saved themselves more than $100,000 by the defeat of one measure (the Official Gazette Bill),— but the point is that it was money wasted to bring the question up at all, and the system of direct legislation was imposed upon.

The reform outlined would only effect in the most indirect way the three other dangers mentioned, namely: that measures are often confusing; that statements in the Voters' Pamphlet are often misleading; and that constitutional amendments are passed as readily as statutory laws.

In regard to the first two I think that a drafting committee or commission appointed by the Governor or the State Board of Control should be provided to prepare the ballot titles and to make the purposes of the measures plain to the voters in the Electors' Pamphlet and throughout the press. The drafting committee could be and even should be used to assist the Legislature in its work. This committee should be guided in its work by a statute of constitutional provision regulating the form of the law. It ought to be impossible to draft a bill with many different and composing subjects.

As to a method by which the people would discriminate between a constitutional amendment and a statutory bill there is a measure pending for the 1912 election which is intended to obviate this difficulty. This measure requires a majority of all the votes cast in the election to carry an amendment to the constitution. A safeguard this is to be sure, but one which of itself will hardly accomplish all that is needed. The assistance of a drafting committee would help somewhat, but if the people of Oregon really want a constitution, it would seem reasonable that a proposed amendment either should be passed at two consecutive elections or that before submitting it to the voters, it should be presented to at least one session of the Legislature for examination, discussion and possible amendment. As has been explained, all that is now necessary is that a petition said to contain eight per cent. of the voters be presented to the Secretary of State one hundred and twenty days previous to the election, whereupon the amendment will go upon the ballot; and it often happens that it is made a part of the constitution by less than a majority of votes.

But the fundamental thing is to eliminate from participation in direct as well as in representative legislation the man who does not care, but who manipulates the machinery of government for money; and to substitute in his place honest, interested, respectable citizens.

If such changes are made, direct legislation in Oregon will not only be what the thousands of earnest citizens hoped it would be when they adopted it so overwhelmingly, but it will be a safe model for other states to use in their efforts to improve their political systems. Unless something is done toward correcting the abuses that have come from the system, however, the time is not a great way off when the question of direct legislation will be made the great issue upon which the people of the state will divide and divide sharply. When they do, the result of the contest will be of much less importance to the political, economic, social and financial interests of the state than the agitation which will affect every citizen adversely. Whether or not the people respond to the occasion and apply needed remedies and safeguards before it is too late, will be a fair test of their fitness for participation in direct legislation.

CHAPTER XVI

CONCLUSION

AFTER I had written the preceding chapter intending it to close the story of direct legislation in Oregon, a farmer friend to whom I was explaining the work would hardly hear me through until he asked "What stand do you take on the Initiative and Referendum?" I replied that the purpose of the undertaking was not to set forth my opinions, but just to give the true story of our experiment. This did not satisfy my friend and before we separated he had a free and full confession from me and I think I had quite as full a one from him. We found that we were practically agreed though we did not at first know it. Thinking that these lines may be read by some other friends who are more interested in where I stand than in what I say, I presume I can save some time and energy for both of us by stating my position here rather than deferring it for a convenient time when we might go over the matter together.

I believe in the people as all of us do who believe in representative government. I believe that the people of Oregon are intelligent enough and honest enough, to settle any measure, when it is presented to them fairly and squarely, and settle it right. If I had doubts as to their ability, these would have been dispelled by the record which the people have made under the experiment imposed upon them in the past four elections in which they have settled in a way deserving of high compliment some sixty-four measures covering a range of subjects extending from the purchase of a toll road in the heights of the Cascade Mountains to the prohibition of fishing in the depths of the Columbia River. So I have faith in the people and argument to support it.

And I also believe in the principle of the Initiative and the Referendum. They are great and safe powers which the people took over to themselves to improve political conditions in Oregon. If I needed any argument for my belief, I could find it in the record of the past four elections where the people have adopted a number of much needed measures. I believe in the people and the principle of the Initiative and the Referendum.

But I do not believe that the people are capable of settling or that they ought to be required to settle measures which they do not understand and upon which they cannot get dependable information. The average citizen ought not to be imposed upon by a great number of measures or expected to give attention to the details of legislation.

As to the Initiative and the Referendum I do not believe they were intended to supply a few individuals with the power to set up a rival Legislature. They were adopted as reserve measures to be used only when needed and to supplement and improve the work of a Legislature already established. The Initiative was to be used in extreme cases where the Legislature failed or refused to enact laws or submit amendments needed by the people; the Referendum was adopted so that the people might annul objectionable measures passed by the Legislature. We have used them for both these purposes, but we have used them many times for very different purposes. For instance in our last election, the people were compelled to pass upon thirty-two measures for no one of which there was a real public demand, as is shown by the fact that not one of them received a majority of the votes cast in the election.

And so we seem almost to have forgotten the purpose for which we adopted these extraordinary powers; and if we are honest we will admit that the tools which we so laboriously fashioned to protect ourselves from the bad elements in politics, have been frequently wrested from our grasp by this very element and used against us.

When we point with pride, as well we may, to the good results of direct legislation in the hands of our people, we must also acknowledge its weaknesses and abuses. But in this recognition there is not necessarily discouragement — the only real discouragement would lie in our failure or refusal to recognize them. We cannot expect to remedy an evil until we know what that evil is.

What we, the friends of direct legislation in Oregon need fear most is not fair and impartial investigation of our experiment, but rather the blind and partial contention that it is perfect. We have made many mistakes and our system is far from perfect, but we are going to profit by those mistakes.

It is to be hoped that we are about ready to turn our ear from the hollow voice of the demagogue who has heretofore too often secured our support through his flattery of ourselves and our system, to listen to the honest citizen who tells us of our faults and dangers and thus helps us to overcome them, and approach nearer perfection.

The people of Oregon are to be trusted. The principle of the Initiative and the Referendum is safe. But the machinery of direct legislation is crude and weak in many places. Such was to be expected. With all our efforts in all these years we must own that representative legislation has not been all we hoped it would be. Is it then astonishing that in the short period of eight years we have not perfected the machinery of direct legislation? Much better was not to be expected. Nor would it have meant much to us to have been given this power in perfect form. It is necessary that we perfect it, and there are good sighs that we have begun our task.

APPENDIX

NOTES

NOTE 1

In the election of 1910, nine measures were passed, four of which were constitutional amendments and five statutory laws. Not one of the nine received a majority of the total vote cast in the election. The basis upon which this vote was reckoned was that cast for Governor and Supreme Judge.

NOTE 2

When it is understood that with one or two exceptions the biennial appropriations made by the Legislature are the sole provisions for running expenses of the state institutions, the seriousness of a referendum which holds the appropriation up from one session of the Legislature to the other will be appreciated. In such cases employees for the institutions suffer greatly and the cost to the state in both supplies and labor is considerably increased. In the case of the Omnibus Appropriation Bill of 1906, merchants charged the institutions involved from ten to twenty per cent. above the market price for supplies on account of the additional cost of carrying the accounts; and the banks discounted the warrants of the employees from five to fifteen and twenty per cent. and in some cases would not take the paper at all.

NOTE 3

The emergency clause is a constitutional provision by which a bill goes into effect immediately upon the Governor's signing it or the Secretary of the State filing it, as contrasted to bills without it which go into effect ninety days after the adjournment of the Legislature. The emergency is intended to apply in case of measures for the immediate preservation of the health, peace or safety of the people. Ex-Governor Chamberlain took a strong stand against the use of the emergency clause where no emergency existed and said he would veto every bill which violated this provision. This same attitude has marked the legislative bodies of recent years and there is little tendency to pass bills with the emergency clause attached unless it is clearly an emergency measure.

NOTE 4

When Oregon's sister state, California, adopted the Initiative and the Referendum, remembering the struggles of the University of Oregon with the Referendum, she excepted educational institutions from its operation. See Note 41.

NOTE 5

The circulator's affidavit reads as follows: "I, being first duly sworn, says: [here shall be legibly written or typewritten the names of the signers of the sheet] signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address and residence correctly, and that each signer is a legal voter of the state of Oregon and county of ——" [or city of —— as the case may be].

NOTE 6

The opinion of the Supreme Court of Oregon in the University of Oregon referendum case declares that in an action to enjoin the Secretary of State from placing a measure upon the ballot the plaintiff must be the legal officer of the state, which in the circuit would be the District Attorney of Marion County or the Attorney-General of the state. In the Circuit Court in the University case a taxpayer was recognized as a proper plaintiff, but the Supreme Court reversed the decision which was favorable to the University, on this point and dismissed the case.

NOTE 7

The Anti-Pass Bill was declared unconstitutional on account of the lack of the enacting clause, but it was afterward included by the Legislature in the act creating a railroad commission for the state of Oregon.

NOTE 8

The People's Power League is an organization composed of Oregon citizens favorable to the Initiative and the Referendum and interested in passing legislation by these methods. It has been quite the most responsible of all organizations for bills initiated in the state. The work of the organization is carried on by an executive committee of which Mr. W. S. U'Ren is Secretary.

NOTE 9

The vote undoubtedly indicates the advantage that centers of population have in deciding questions, an observation that will be more thoroughly considered in connection with the selection of candidates under the provisions of the Direct Primary Law. The thorough organization of the Monmouth Alumni which waged a most effective campaign was a strong factor in determining the success of the Monmouth schools. The selfishness of communities is shown through the vote of Polk County where Monmouth is located, as compared with that of the counties in which Ashland and Weston are located. The voters of Polk County defeated the bills for Ashland and Monmouth while the voters from the counties in which Ashland and Weston are located returned a good majority for Monmouth.

NOTE 10

The title of the measure in full was:

"For an amendment of Article IV, Constitution of Oregon, increasing initiative referendum, and recall powers of the people; restricting use of emergency clause and veto power on state and municipal legislation; requiring proportional election of members of legislative assembly from the state at large, annual sessions, and increasing members' salaries and terms of office; providing for election of Speaker of House and President of Senate, outside of members; restricting corporate franchises to twenty years; providing ten dollars penalty for unexcused absence from any roll call, and changing form of oath of office to provide against so-called legislative log-rolling."

NOTE 11

It was interesting and a bit discouraging to note that shortly after the bills referred to passed, the Wells Fargo

Express Company (the principal express company doing business in Oregon), raised the local rates in some cases about ten per cent. I am not prepared to say that the gross-earnings tax bill caused this, but the raise came as if in response to the enactment of the measure.

NOTE 12

Among the statements made in the pamphlet was the following: "The University is not poor. Its students are not poor. They recently employed a man to coach their football team, paying him $1,500 for a little more than two months' instruction."

At the time the Referendum was invoked the University of Oregon received the smallest appropriation of any State University in the Union. From 70 per cent. to 80 per cent. of its students were wholly or partially self-supporting, its teachers were serving on less than half pay, some buildings were without heat or fire protection and in order to accommodate the scholars in class rooms, it was necessary in some cases to carry chairs from one building to another between recitations. The statement in regard to the coach was a pure fabrication.

NOTE 13

The experience of the University of Oregon with the Referendum has been one of the extraordinary features of the story of direct legislation in this state. It is referred to by the advocates of the system as one of the arguments for popular legislation, and by the opponents as one of the arguments against the system. The advocates point to the way in which the people have upheld the institution when the issue came to a final vote, and credit the results to their cause. The opponents point to the fact that the institution has been greatly hampered by the holdup, its efficiency impaired and its existence threatened by the application of the Referendum to the appropriations made by the Legislature. Both are right as to the facts that have resulted; that is, the people have stood by the institution in a crisis, and the institution has been greatly hampered. It is a strange fact that every appropriation granted the University since the enactment of the Initiative and the Referendum amendment has been referred to the people.

NOTE 14

The full title of the amendment above referred reads as follows: "For constitutional amendment providing for the choosing of jurors and grand jurors, and that no person can be charged in the Circuit Courts with the commission of a crime or a misdemeanor except upon indictment found by a grand jury, except when a court holds an indictment to be defective, the District Attorney may file an amended indictment."

NOTE 15

During the last session of the Legislature that body desired to pass a measure by which mortgages could be taxed at the time they were placed on record. It is in Oregon that the mortgage tax law is practically inoperative, its principal effect being to drive home capital to other states for investment. The Legislature found its hands tied by the above amendment which prohibits it from enacting any tax legislation.

NOTE 16

The Employer's Liability Act secured under the Initiative in the 1910 election is along lines pursued by other states since that time. Up to 1910 the Oregon Law applied a rule to the abolishment of the Fellow Servant Rule in regard to railways. By the 1910 act the negligence of a fellow servant could not be set up as a defense when the accident was caused or contributed to by: 1. Defect in structure, materials, works, plant or machinery. 2. Negligence of superintendent or person in charge. 3. Negligence of one to whose orders the workman was bound to conform and did conform to his injury or death. 4. The act of any fellow servant done in obedience to rules or instructions.

NOTE 17

In the session of 1911 the Legislature passed a bill which would have modified somewhat the results of this Initiative measure, and compromised the conflicting interests along the Rogue River, but the Governor vetoed the measure.

NOTE 18

The greatest evil which grew out of the old-time convention was the indiscriminate use of proxies. When a number of delegates were chosen from a district to attend the convention, it was a common thing for them to appoint some other members of the convention as their proxy; that is if five members could not attend the convention, the power to cast five votes besides his own would often be given some one member of the convention. Sometimes delegates were chosen with the understanding that they would surrender their proxies to certain individuals of political power in the community. In a convention of less than one hundred and fifty men, I have known one member to hold as many as forty proxies. Such a system could not of course always endure, and this feature is more responsible for the downfall of the convention than any other single one.

NOTE 19

In connection with the primary election held in Oregon in April, 1912, there was not a single local, county, or district convention held.

NOTE 20

An illustration of how a man who, even if he called his millions into action for that purpose, could not possibly get the support of a political convention on account of his checkered career as a politician; and yet of how he did get the support of enough of the electors to elevate him to office because he took a firm stand for principles which are near to the people,— such an illustration is furnished by the case of the Senior Senator, Jonathan Bourne.

NOTE 21

A good illustration of this point is found in the selection of candidates for the Legislature from Multnomah County in previous elections held under the Primary Law. With a few exceptions these men were not generally known to the public. Out of a list of about thirty candidates for State Representative in one of the elections, thirteen were chosen. With one exception, the men whose names appeared upon the ballot first (the position being determined by alphabetical arrangement), were elected. At the last session of the Legislature a law was made requiring that names be rotated in cases where there were more than four applicants for the same office. Although this does not get at the root of the matter, and although it will prove quite expensive, it will undoubtedly give less of an advantage to the men whose names begin with the first letters of the alphabet.

NOTE 22

Statement No. 1 reads in full as follows:

"I further state to the people of Oregon as well as to the people of my delegation district that during my term of office I will always vote for that candidate for United States Senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of the Senator in Congress without regard of my individual preference."

NOTE 23

The following editorial appeared in the *Oregonian* the day after the election of Senators Bourne and Mulkey:

"A Milestone in History."

"The virtually unanimous ratification by the Legislature of the popular choice of Mr. Mulkey and Mr. Bourne for United States Senators marks an epoch on the political history of Oregon. It is not likely that the precedent thus firmly established will be broken hereafter. The time of the Legislature will henceforth be devoted to the business of the state; its only concern with the election of senators will be to fulfill the constitutional form by ratification of an antecedent popular choice.

"Seldom has a body of public men given a finer demonstration of loyalty to American principles than the Oregon Legislature gave in ratifying promptly and decisively the popular election of Senators Mulkey and Bourne. By doing this they have acknowledged the fundamental truth upon which our institutions rest, namely: that all power ultimately resides in the people and that whenever the people choose to exercise this power directly it is their right to do so. Our legislators have also acknowledged with noble fidelity to fact and reason, that, high as their duties may be, they are but the servants or agents of the people, and that the popular mandates expressed under the forms of law are of binding obligation upon all public officials. We may therefore say without undue insistence on its importance, that the ratification by the Oregon Legislature of the popular choice of our senators marks an epoch in the development of free institutions."

NOTE 24

If further proof of this game were needed the record of the Legislature of 1904 would supply it. While it was very clear that the Statement No. 1 men were in a majority in that body, much pressure was brought to persuade a few of them to break their pledges. Three changes in the ninety would have been sufficient. However, this effort did not succeed and as a last resort a number of the members were persuaded to make a statement when they voted, to the effect that Chamberlain was not their personal choice but that some other man (naming him) was; however, they had signed Statement No. 1, and against their will they would vote for Chamberlain. It was intended to make these statements, which were made a part of the official record, a basis upon which the National Senate would refuse to seat Mr. Chamberlain. This plan did not succeed.

An interesting feature of the contest was the appearance of an eastern politician by the name of McHarg, a Republican, who crossed the continent to assist the Oregon Legislature in the selection of a Republican senator.

NOTE 25

Although Governor Chamberlain had become very popular with the people of Oregon on account of his administration and his unusual abilities as a politician, an analysis of the vote cast in the general election will make it perfectly clear that the margin by which he was elected was contributed to particularly by those Republicans who opposed Statement No. 1, and who hoped by giving the popular vote to a Democrat, to have the statement overthrown and compel a Republican Legislature to elect a Republican to represent Oregon in the Senate.

NOTE 26

There are other instances in which attempts have been made to use the recall, sometimes successfully; but the ones that have been given are sufficient to illustrate how the recall works in Oregon at this time. Among other cases which were not pushed to a conclusion, were those of the judges and commissioners of Clackamas County, of the judges and commissioners and assessor of Lane County, of the judge and commissioner of Lincoln County; of Councilman S. P.

Ness of Eugene; Councilman Stone of Klamath Falls; the mayor and school directors of Union; and some other scattered cases. The first and only recall election held in Portland, Oregon, was the case of Councilman Ellis in which that official was recalled.

NOTE 27

"THE REVENGEFUL RECALL." From the *Oregonian*, Feb. 25, 1910: "Four workings of the recall in Oregon — latest in Ashland — have shown the new law to be a tool of personal spite and political revenge. Mayor Snell, of that city, has just defeated a recall attack by a 2-to-1 vote, after the same kind of hateful war that has rent each community that has resorted to the newfangled law. Last fall the town of Union was the battleground for the same pesky strife and last spring Junction City, Mayor Houston, and in Estacada, Mayor Heylman, were unseated by rival factions, whose rancor was so extreme that they could not wait the brief interval until the next regular election of city officers. In no case did this business promote the cause of honesty or decency in politics. These small-town brawls were of the bitterest kind. They set neighbors against each other in almost riotous strife. Instead of waiting for orderly settlement of their disputes in the next near-by election they resort to the revengeful agency of the recall and of unreasoning clamor. The recall thus far has not proved itself a beneficial means of determining the public will. It exerts no corrective influence over officials that the laws against official corruption and the controlling power of public sentiment do not. And it places in the hands of hostile factions a powerful weapon for revenge and spite and wrongdoing. The public still waits for some wholesome use of this new law, and probably will wait in vain."

NOTE 28

While the Corrupt Practice Act prevents any relative or close associate of a candidate contributing to his campaign expenses, there is no limit upon the contributions that friends may make, and as a consequence the rich man has an advantage now practically the same as he formerly possessed over the poor man. This weakness of the law makes the regulation feature amount practically to nothing. In the election of 1912 one candidate received in the way of contributions from his friends over $6,000.

NOTE 29

The regulations governing the cost of space in the Voters' Pamphlet are as follows: —

"Section 3. Candidates for nomination shall pay for one page of space in the publication herein provided for as follows: For the office of United States Senator in Congress, one hundred dollars; for Representative in Congress, one hundred dollars; for Justice of the Supreme Court, seventy-five dollars; for Governor, one hundred dollars; for Secretary of State, one hundred dollars; for State Treasurer, one hundred dollars; for State Printer, one hundred dollars; for State Superintendent of Public Instruction and Attorney-General, each seventy-five dollars; for Commissioner of Labor Statistics and Inspector of Factories and Work Shops, fifty dollars; for Senator or Representative in the Legislative Assembly, ten dollars; for Circuit Judge and District Attorney, fifty dollars each; for candidates for any other office for a district consisting of one or more counties, or state office, twenty-five dollars. Any candidate may have additional space at the rate of one hundred dollars per page, but no payment shall be received for less than a full page, provided, that not more than three additional pages shall be allowed to any one candidate. All payments required by this section shall be made to the Secretary of State when the statement is offered to him for filing, and be by him paid into the general fund in the state treasury."

NOTE 30

The principal features of the law which affects the character of election day are sections 32 and 34 as follows:

"Section 32. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering, or for the expense of transportation to or from the polls. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election, for any purpose connecting therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty is to act as challengers and watch the count of official ballots. No person shall buy, sell, give or provide any political badge, button or other insignia to be worn at or about the polls on the day of any election, and no such political badge, button or other insignia shall be worn at or about the polls on any election day.

"Section 34. It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people and upon conviction thereof he shall be punished by fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment."

NOTE 31

The result of the presidential primary election in Oregon was the selection of Republican delegates favorable to the several candidates for the nomination, the situation being similar to that more recently occurring in Massachusetts, except that in Oregon Mr. Roosevelt received the largest vote although a plurality of Taft men were selected for the Republican convention. The number of delegates sent to the Chicago convention from Oregon was ten, all of whom were instructed. See Note 42.

NOTE 32

During a number of sessions of the Oregon Legislature the Normal School issue was one upon which there was much dissension and difference of opinion, some contending that on account of the size of the state and the geographical location a system of at least three normal schools should be maintained, others clamoring for one. The latter class declared that the thing to do was to have one good central normal school and support it well. It is interesting to note that after the people had decided upon one school to be located at Monmouth and the Legislature had made an appropriation to construct a much needed building, the Referendum was at once filed and the one school finds itself fighting for existence as in former days, but fighting its battle alone.

NOTE 33

Neither at the time of this action nor since have the schools of the state been able to furnish anything like the number of teachers in demand.

NOTE 34

The greatest disadvantage under which the Oregon Legislature works is the great amount of legislation that is undertaken with too little time to attend to it. This difficulty is aggravated by the facts that seventy-five of the ninety members of the body are newly elected for each term and that the terms are biennial. The People's Power League submitted an amendment proposing to remedy some of these disadvantages in 1910, but it contained other proposals which complicated and defeated it. There are indications that the Legislature at its coming session will take steps to increase its efficiency through a better working organization.

NOTE 35

But many who formerly participated in Oregon politics have dropped out certainly is true, and on the whole is to be regretted. The radical change from a convention system to the party primary would naturally preclude many who were active in and favorable to the convention system. This has resulted in a sacrifice of leadership.

NOTE 36

Although there are a number of single tax advocates working on salaries supplied by the Fels Fund, there are a few men devoted to the principle who are receiving nothing and sacrificing much in the fight. These men are respected as their unselfish devotion deserves.

NOTE 37

For quite a time those who were looked for by the Fels Fund to secure single tax for Oregon denied that the amendment to which reference has been made was intended as a single tax proposition. But probably the best authority on that question is the report of the Fels Fund itself, a copy of which legal voters of the state received, and an extract of which reads as follows:

"Oregon has secured county option in taxation. This is the furthest step in advance that any state in the Union has yet succeeded in taking. It was obtained after a hard-fought campaign, which required a very large share of the resources at the command of the Commission. Now the Single taxers of Oregon are preparing to take advantage of the power thus gained, by submitting the question of adopting the single tax to the voters of every county. They will, furthermore, submit an amendment to the State Constitution, providing for state wide application of the principle.

"These questions will all be decided at the election held in November of 1912. Oregon is getting close to the goal, and if the workers receive proper assistance, and encouragement, will surely get there two years before the time limit set for the Commission's work has expired."

NOTE 38

The Supreme Court has recently given a decision in the University Referendum case. Greatly to the surprise of the public the question of fraud was not touched upon at all. The court gave its opinion that the plaintiff in this case would have to be the legal officer of the state, whereas, the plaintiff who brought the case was a citizen and a member of the Board of Regents of the University of Oregon. There is a motion now pending for a rehearing on the merits of the case.

NOTE 39

After deciding the legal points involved in the suit, favorable to the University of Oregon, Judge Galloway of the Circuit Court of Marion County said as follows:

"As we have said, this suit does not involve the adjudication and settlement of mere private rights, but rights of a very broad and universal interest.

"The right of petition, reserved by the constitution to refer to a vote of the people any measure passed by the Legislature, was not intended to be used to settle or adjust private and local grievances; but the right contemplates the rights to express the honest sentiment of disaffected voters upon public matters only. The evidence in this case disclosed that the petition originated in a case of local neighborhood contention and spite; that in carrying into effect this unworthy motive, means were employed to obtain signatures upon a money basis and to further a personal spleen and revenge by a committee of Cottage Grove citizens. An order was first given to H. J. Parkison to procure 3,000 names which he was to be paid at the rate of seven cents for each name so secured to each of the two petitions referending the two acts in this cause. This dealer in names for a price, procured agents for which he at one time vouched to go into the street and most questionable places in Portland to procure names. Some of these agents went under assumed names, and in this manner made the affidavit required to verify the petition. Long before the petition was filed, Mr. Parkison was advised that a large part of the names handed in to him by his agents were fictitious and fraudulent. He so notified his principal at Cottage Grove, and agreed to replace 600 or 800 names admitted to be fraudulent, among these delivered by him to the Committee of that place. A dispute arose among these gentlemen who originated the petition as to what should be done with it, and between some of the Committee and Mr. Parkison as to the manner in which he should perform his contract. There is some testimony to the effect that he and Mr. Abrams filed the original 3,000 names without taking out the 600 or 800 fraudulent names, but Mr. Parkison swore that he did not file them. It is certain, however, that he did not eliminate all of the fraudulent names, for the defendant has been compelled to admit the existence of 3,722 fraudulent names and others suspected in the petition as filed. It is shown, however, that Mr. Parkison knew that Chas. Falk had furnished him fraudulent and forged names, still he employed this untrustworthy person to procure more names, and he took no steps to ascertain the validity of these latter names but filed them with the others. These names form a part of those now admitted to be fraudulent.

"Now Mr. Parkison appears to be the one man who has stood back of the state officers and insisted upon a strenuous and technical defense of the purity of his petition, and through the medium of the attorneys for the defense he has insisted that this court delve into the circumstances surrounding each signature on this petition to determine, if possible, its genuineness, all at the expense of the state and the citizens who have uncovered this fraud and are now contributing to the maintenance of this suit. But we are firmly of the opinion that such persons who are indirectly, if not directly responsible for the frauds that are shown and admitted to have been committed in the preparation of this petition, are not now in a position to ask an Equity Court to perform the unusual, and we may say the herculean task, of sifting out, name by name, the good from the bad to ascertain, if possible, whether there may not be sufficient untainted names to maintain this petition so that some spite may be worked out against an institution of the state. People who desire to present such a petition are under obligation themselves to see that there is no fraud in it before presenting it for filing. The proof, in the nature of an oath, specific in form, must be endorsed on each sheet of the petition, and if it is shown that these affidavits are to a great extent false and knowingly so, or the circumstances are such that those filing the petition ought themselves to have known of the falsity of the petition and took no care to protect it from fraud, they are in no position to complain if a Court of Equity declines to hear them at all. Doubtless few, if any, of the reputable signers of this petition know that their names were thus being used as articles of traffic for money consideration or as an agency to satisfy a petty revengeful spirit.

"If the parties filing this petition with the Secretary of State had no knowledge or suspicion bordering on conviction, that a great part of these petitions were fraudulent, why did they file some 8,000 names more than the number required to referend the act, at a cost of over $500 for so doing?

"Other than some 2,300 names to these petitions secured in the counties of Benton, Lane, Linn, Marion, Polk and Yamhill, all the other names to the petitions secured in Portland, Oregon City, The Dalles, and Astoria by the conspiring circulators, all residents of Portland in the employ and as agents of H. J. Parkison, are so permeated with fraud, forgery, and conspiracy that a Court of Equity and good conscience, will not hesitate to decree all as invalid and of no effect.

"The defendant's counsel admits that the petition filed by Mr. Parkison with the Secretary of State contains nearly 4,000 fraudulent names, and that others may be tainted, but that he is convinced that there are more bona fide names (viz. 6,135), on the petition than are necessary to meet the requirements of the law to referend House Bill No. 210; and upon this showing asks the court to dismiss plaintiff's complaint. If a party were indebted to the state in the sum of $6,135.00 and should tender the Secretary of State $13,615.00 with the admission that $4,000.000 of the sum so tendered were counterfeit, and others bore evidence of suspicious character, the court surmised that the learned attorney would not advise the Secretary of State to accept the tender and liquidate the obligation, but rather that he would have the circulator of counterfeit money arrested and prosecuted as the law directs. The court is of the opinion that he who knowingly files a fraudulent petition is no less morally culpable than he who traffics in counterfeit money.

"The court is of the opinion that the defendant, upon learning of the mutilated and disarranged condition of the petitions, with the positive evidence of irregularity as to form of same, might well have refused to sign them, thereby throwing the burden of proof of the legality of the petitions upon the parties at fault, by mandamus proceedings as provided in the statute.

"It is the opinion of this court that judged by legal consideration alone, the petition is void, and ought not to stand because of the evident lack of a sufficient number of genuine names of legal voters of the state to refer the measure, and, judged by the conscience of a Court of Equity, those seeking to maintain it are not in court with clean hands, and ought not to be granted the unusual request to purge the petition of fraud for which they are more or less responsible. The injunction will be made permanent, and it is so ordered.

NOTE 40

In the famous University of Oregon Referendum case, about 10,000 names said to have been secured in the city of Portland were compared with the registration list. Those defending the petition sought to defend it against the charges of fraud, and by this means of comparison, to establish the genuineness of the signatures. Only 2,900 were found that were on the registration books, and this is as far as the defense could go in the effort to prove their case, because to have carried it further would have required bringing into court one at a time the separate signers of the petition.

The Supreme Court of the State of Oregon has decided that it is not necessary for a man to be a registered voter in order to sign an initiative or a referendum petition. In the case of several petitions circulated in Portland, names had been written with addresses which upon investigation proved to be saloons, churches, dance halls, vacant lots, and in some cases the middle of the Willamette River. With no means of checking up these names with genuine voters, they have stood before the law as genuine unless proved conclusively otherwise.

NOTE 41

Washington, in the amendment now pending, has followed California's example in excepting educational institutions from the operation of the Initiative and Referendum.

NOTE 42

Oregon's ten members to the National Republican Convention of 1912, were instructed, in accordance with the vote under the Presidential Preference Primary, for Theodore Roosevelt, although some of the delegates selected were for Mr. Taft or for Mr. LaFollette. Eight of the ten delegates voted for Mr. Roosevelt upon roll call, and these included both the Taft and LaFollette supporters. Two members of the delegation, however, who were Roosevelt men refused to vote at all. In the organization of the convention the vote for Chairman was split. Little criticism, however, has been offered on this point but considerable was publicly made through the fact that the two men who refused to vote did not register, as they were instructed, for Mr. Roosevelt.

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